



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2006

Mr. David Caylor
City Attorney
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2006-04551

Dear Mr. Caylor:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 247990.

The City of Irving (the "city") received a request for (1) "a copy of a City of Irving Code or Ordinance" violated by the requestor, (2) a complaint, including the name of the complainant, received by the city's Citizen Inquiry Coordinator and pertaining to the requestor's property, (3) "a document that lists the name of at least one citizen who has worked as a volunteer in 2005 that had access to information concerning calls reporting code violations," (4) a copy of the information provided to the Irving Journal on or about June 1, 2005, (5) complaints made by the same complainant pertaining to three other addresses during February 2006, and (6) "the necessary record showing if [named individual] photographed other homes" on a specified street on February 8, 2006. You state that some of the requested information has been released. You claim that the information at issue is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the city has only submitted the complaint pertaining to the requestor's home. To the extent any other information responsive to the request existed on the date the city received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code § 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

The city asserts that a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The informer's privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informers identity. Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). However, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro v. United States*, 353 U.S. 53, 60 (1957).

You state that the complaint made in the submitted documents relates to a violation of the city's Code of Civil and Criminal Ordinances. You further state that the person who violated the city ordinance may be subject to prosecution in municipal court. Based on this representation, the city may redact the information that we have marked on the submitted documents pursuant to section 552.101 in conjunction with the informer's privilege. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body

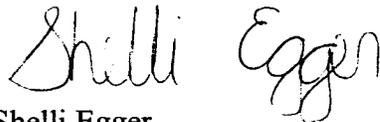
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 247990

Enc. Submitted documents

c: Mr. S. Paul Jordan
1519 Arcady Lane
Irving, Texas 75061
(w/o enclosures)