



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2009

Ms. Kristy Ashberry
City Secretary
City of Rockwall
385 South Goliad
Rockwall, Texas 75087

OR2009-11597

Dear Ms. Ashberry:

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# 353231.

The City of Rockwall (the "city") received a request for records pertaining to the complaints referenced in a Notice of Code Violation the requestor received. You claim the submitted Case History Activity report is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 (1988), 287 (1981). This section is generally not applicable to records created by an agency whose chief function is essentially regulatory in nature. *See* Open Records Decision No. 199 (1978). An agency that does not qualify as a law enforcement agency may, under limited circumstances, claim that section 552.108 protects records in its possession.

See, e.g., Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493 (1988), 272 (1981). If an administrative agency's investigation reveals possible criminal conduct that the administrative agency intends to report or has already reported to the appropriate law enforcement agency, section 552.108 will apply to information gathered by the administrative agency if its release would interfere with law enforcement. *See* Gov't Code § 552.108(a)(1), (b)(1); Attorney General Opinion MW-575; Open Records Decision Nos. 493, 272.

You state the submitted information pertains to violations of the city's Code of Ordinances that are under investigation by the city's Code Enforcement Department (the "department"). You have not, however, explained how the department is a law enforcement agency for purposes of section 552.108, nor informed us if the information at issue has been forwarded to an appropriate law enforcement agency. Therefore, you have failed to demonstrate that the submitted report is excepted under section 552.108(a)(1).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses the informer's privilege. *See* Gov't Code § 552.101; *see also* *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); Open Records Decision No. 582 (1990). The informer's privilege protects the identity of a person who reports a violation or possible violation of the law to officials charged with the duty of enforcing the particular law. The privilege also protects individuals who report violations to administrative agencies having a duty to enforce statutes with civil or criminal penalties. *See* Open Records Decision No. 515 at 2 (1988). The informer's privilege does not apply if the subject of the information already knows the informer's identity. Open Records Decision No. 208 at 1-2 (1978).

You represent the complainant reported possible violations of city ordinances to the department. You state that penalties can be assessed for violations of these ordinances. Based on your representations and our review, the complainant's identifying information may be withheld under the informer's privilege.

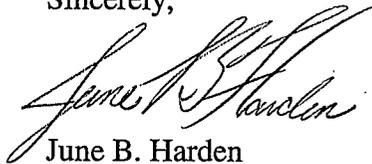
In summary, the complainant's identifying information may be withheld under the informer's privilege. The remaining portions of the Case History Activity report must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information

under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/sdk

Ref: ID# 353231

Enc. Submitted documents

c: Requestor
(w/o enclosures)