



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 15, 2009

Ms. Sharlene N. Collins
Armbrust & Brown, L.L.P.
Attorneys for North Austin Municipal Utility District No. 1
100 Congress Avenue, Suite 1300
Austin, Texas 78701-2744

OR2009-14602

Dear Ms. Collins:

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# 358343.

The North Austin Municipal Utility District No. 1 of Travis and Williamson Counties (the "district"), which you represent, received a request for a copy of a complaint pertaining to the requestor's property. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects 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 informer's identity. *See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The 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." *See* 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). The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You state that the submitted information identifies a person who reported alleged violations of restrictive covenants. You explain that section 54.237 of the Water Code authorizes the district to enforce restrictive covenants pertaining to real property located within the district's boundaries. You also state that under section 202.004 of the Property Code, a violation of a restrictive covenant can result in a civil penalty of up to \$200.00 per day. Based on your representations, we have marked the information that the district may withhold under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

We note that the remaining submitted information contains an e-mail address that may be excepted from public disclosure under section 552.137 of the Government Code.¹ Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a general business address nor to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of the e-mail address at issue. Therefore, provided that the e-mail address at issue is that of a private individual and not a general business address, the district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to disclosure.

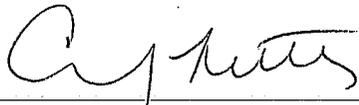
In summary, we have marked the information that the district may withhold under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Provided that the e-mail address at issue is that of a private individual and not a general business address, the district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to disclosure. The remaining submitted information must be released to the requestor.

¹The Office of the Attorney General will raise a mandatory exception such as section 552.137 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 358343

Enc. Submitted documents

c: Requestor
(w/o enclosures)