



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 24, 1994

Ms. Gretchen Kuehn Bohnert
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR94-262

Dear Ms. Bohnert:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24130.

The City of Houston received an open records request for the identity and address of any individual who complained about the construction at 502 Highland. You contend that this complaint concerned a violation of a deed restriction and that the identity of the complainant may be withheld from required public disclosure under the informer's privilege component of section 552.101.¹ To support this position, you rely on a letter dated August 14, 1985, from the Office of the Attorney General. This letter concluded that the identity of a person reporting a violation of a deed restriction could be withheld under the informer's privilege because article 974a-1, section 2(a), V.T.C.S., authorized the city to institute judicial proceedings to enjoin or abate the violations.

We conclude that the letter you rely on no longer accurately expresses the law regarding the informer's privilege. Since that letter was issued, this office has clarified that the informer's privilege protects the identity of an individual only when the individual reports activities over which the governmental body has criminal or quasi-criminal law-enforcement authority. Open Records Decision No. 515 (1988) at 3.

¹You also argue that the information you submitted for review is excepted from disclosure by section 552.103(a) because it contains the mental impressions of a city attorney. We do not address this argument, however, because the requestor is seeking only the identity and address of any complainant and not any of the other information you submitted for review. The identity and address of a complainant are clearly not the mental impressions of an attorney.

Section 230.003 of the Local Government Code, which replaced article 974a-1, section 2(a), permits some municipalities to sue to enjoin or abate a violation of a deed restriction. This section does not, however, give any municipality any criminal or quasi-criminal law-enforcement authority to enforce deed restrictions. Rather, this section gives some municipalities the same authority to bring suit to enforce a deed restriction as a person entitled to benefit from the restriction. *See* 16 TEX. JUR. 3d *Covenants, Conditions, and Restrictions* § 117 (1981) (discussing the authority of both a person entitled to benefit from a restriction and a municipality). Therefore, the city's authority to bring suit under section 230.003 of the Local Government Code does not permit the informer's privilege to protect the identities of individuals who report violations of deed restrictions, and you must release all of the requested information that the city possesses.²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/rho

Ref.: ID# 24130

Enclosure: Submitted documents

cc: Mr. Frumencio Reyes, Jr.
Reyes & Reyes-Castillo, P.C.
3715 North Main Street
Houston, Texas 77009
(w/o enclosures)

²This result is consistent with Open Records Decision No. 279 (1981), which deals with an individual who reported a violation of a zoning ordinance. Because a deed restriction is essentially a private contract between individuals, it is not equivalent to a zoning ordinance for purposes of the informer's privilege. *See* BLACK'S LAW DICTIONARY 1315 (6th ed. 1990) (defining restrictive covenant). This office overruled any suggestion to the contrary in Open Records Decision No. 515.