



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 27, 1995

Ms. Bonnie Lee Goldstein  
Vial, Hamilton, Koch & Knox, L.L.P.  
1717 Main Street, Suite 4400  
Dallas, Texas 75201-4605

OR95-991

Dear Ms. Goldstein:

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# 33130.

The Town of Flower Mound received a request for "all criminal complaints & code violation complaints, & any other complaints filed in the Twin Coves Estates area." The information at issue in this request and the arguments raised by the town are the same as the information and arguments considered in Open Records Letter No. 95-382 (1995), which this office issued June 15, 1995. In a subsequent letter to this office, you request reconsideration of that ruling as it applies to the documents submitted as Exhibit 5. As you do not request reconsideration concerning the other documents at issue, we determine that Open Records Letter No. 95-382 (1995) resolves your request for Exhibits 2, 3, and 4.

In the original request for an open records decision, the town contended that Exhibit 5 is excepted from required public disclosure under section 552.101 of the Government Code as it incorporates the informer's privilege. Open Records Letter No. 95-382 (1995) states that:

With respect to exhibit 5, you have submitted to this office two complaints on a form entitled "TOWN OF FLOWER MOUND COMPLAINT FORM," which you assert are "representative samples" of complaints forming the basis of code enforcement investigations. It is not clear on the face of these documents that

they report illegal conduct. Therefore, we have no basis to conclude that these particular complaints fall within the informer's privilege. Furthermore, it is impossible for this office to make a determination with respect to complaints that we have not reviewed. Therefore, we conclude that the town has not demonstrated that the complaints in exhibit 5, or ones like them, are excepted from disclosure under section 552.101. See Open Records Decision No. 549 (1990) at 6 (informer's privilege waivable by governmental body). Accordingly, they must be released.

Open Records Letter No. 95-382 (1995) at 3.

You have presented arguments to support your contention that the information in Exhibit 5 and other similar documents report illegal conduct. However, these arguments were not presented to this office in your initial request for a ruling. The Open Records Act places on a governmental body the burden of establishing why and how an exception applies to requested information. Open Records Decision Nos. 542 (1990), 532 (1989). You did not meet your burden of establishing why and how Exhibit 5 was subject to the informer's privilege. The informer's privilege is not a compelling exception--it is waivable by a governmental body. Open Records Decision No. 549 (1990) at 6. Accordingly, the determination in Open Records Letter No. 95-382 (1995) at 3 concerning complaints contained in Exhibit 5, or ones like them, stands. You must release this information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Open Records Division

KHG/LBC/rho

Ref: ID# 33130

Enclosures: Open Records Letter No. 95-382  
Submitted documents

cc: Ms. Michelle Carender  
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(w/o submitted documents)

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