



February 10, 1999

Ms. Linda R. Frank  
Assistant City Attorney  
City of Arlington  
P.O. Box 231  
Arlington, Texas 76004-0231

OR99-0408

Dear Ms. Frank:

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# 122104.

The City of Arlington (the "city") received an open records request for information concerning a particular address. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.108 of the Government Code. Specifically, you contend that the identity of the complainant who reported a code violation at the subject address is protected by the informer's privilege and that the "comments" section of the printout from the database of the city's Code Enforcement Division and the city's mainframe computer system used by the city to track issued citations for city code violations is excepted by section 552.108.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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 informer's 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). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You represent to us that the complainant is reporting a “violation of state law (*Transportation Code*, § 683.071 *et seq*) and city ordinance (*Nuisance Chapter, Article VI*).” (Emphasis in original.) We conclude that you may withhold the complainant’s name and telephone number under section 552.101 in conjunction with the informer’s privilege.

Next, you contend that the “comments” section from the city’s database is excepted from disclosure. In seeking to withhold the “comments” section under section 552.108, you rely on Open Records Letter No. 97-1748 (1997), which held that the “comments” section is excepted by section 552.108. Since the issuance of that prior ruling, effective September 1, 1997, the Seventy-fifth Legislature amended section 552.108. Thus, Open Records Letter No. 97-1748 may no longer be relied upon because former section 552.108 and *Holmes v. Morales*,<sup>1</sup> which construed former section 552.108, are superseded by the amended section. Amended section 552.108 now excepts from required public disclosure

(a) Information 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;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state  
[and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

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<sup>1</sup>924 S.W.2d 920 (Tex. 1996).

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

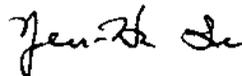
(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We have reviewed your section 552.108 arguments and conclude that you have not shown how release of the "comments" section interferes with the detection, investigation, or prosecution of crime. Moreover, you have not shown how any subsection of section 552.108 applies to except the "comments" section. Thus, you must release the "comments" section.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 122104

Enclosures: Submitted documents

cc: Mr. David Boltz  
2109 Ridgeway  
Arlington, Texas 76010  
(w/o enclosures)