



September 12, 2000

Mr. Peter Smith
Nichols, Jackson, Dillard, Hager & Smith, L. L. P.
Attorneys & Counselors at Law
500 North Akard
Dallas, Texas 75201

OR2000-3494

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138915.

The City of Richardson (the "city"), which you represent, received a request for all complaint information concerning a specific home occupation. Although you state that most of the responsive information has been released, you seek to withhold the complainant's identity under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the document at issue.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 incorporates the informer's privilege which 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.

¹The city submitted a redacted copy of the information for review. The Public Information Act requires governmental bodies that seek a decision under section 552.301 to submit a copy of the specific information requested or representative samples of that information. See Gov't Code § 552.301(e)(1)(d). We expect the city to comply with the requirements of section 552.301 by submitting, among other things, unredacted copies of the information at issue. Failure to comply with the requirements of section 552.301 will result in the information being deemed public. See Gov't Code § 552.302.

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).

You explain that the city “has received complaints regarding an illegal home occupation and/or the operation of a business” by the requestor. You further explain that “[i]t is a violation of the Comprehensive Zoning Ordinance of the City of Richardson to operate a business from a residential dwelling or to operate a home occupation except in accordance with the Comprehensive Zoning Ordinance.” Furthermore, your arguments suggest that violations of the Comprehensive Zoning Ordinance are subject to criminal penalties. Therefore, based on your representations to this office, we conclude that you may withhold information that reveals the complainant’s identity under section 552.101 in conjunction with the informer’s privilege. See Open Records Decision No. 156 (1977).

Because we are able to make a determination under section 552.101, we need not address your arguments under section 552.108. This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

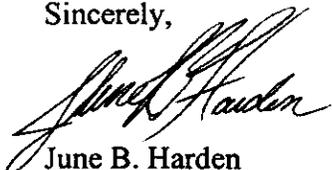
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ljp

Ref: ID# 138915

Encl. Submitted document

cc: Mr. B. Benner
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(w/o enclosures)