



October 15, 2001

Mr. Scott Gibson
Enforcement Attorney
Texas Board of Architectural Examiners
P.O. Box 12337
Austin, Texas 78711-2337

OR2001-1255A

Dear Mr. Gibson:

This office issued Open Records Letter No. 2001-1255 on March 29, 2001. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that the Office of Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of this chapter). Consequently, Open Records Letter No. 2001-1255 is hereby withdrawn. This decision serves as the correct ruling and is a substitute for the decision issued on March 29, 2001.

The Board of Architectural Examiners (the "board") received a request for a copy of the complaint filed against the requestor. You claim that the identity of the individual who made this complaint is excepted from disclosure under the informer's privilege aspect of section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Texas courts recognize the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Public Information Act. Open Records Decision No. 549 at 4 (1990). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law

enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

The privilege applies not only to law enforcement officers but also administrative officials having a duty of inspection or of law enforcement in their particular spheres. It applies wherever the situation is one where without this encouragement the citizens who have special information of a violation of law might be deterred otherwise from voluntarily reporting it to the appropriate official. *See* Open Records Decision No. 515 at 5 (1988) (quoting Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)).

You inform us that the complaint in question alleges a violation of sections 1.103(h) and 1.143(h) of title 22 of the Texas Administrative Code. You state that the Board enacted these rules to implement article 249a, V.T.C.S. You also inform us that under section 11(b)(1) of article 249a, a violation of a rule enacted by the Board is punishable by an administrative penalty not to exceed \$1,000.00, revocation or suspension of an architectural registration certificate, probation of a person whose certificate has been suspended or a reprimand.

We find the informer's privilege is applicable in this instance. Accordingly, based on section 552.101 of the Government Code, the board may withhold from the requestor information that identifies the individual who made the complaint.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Greg Simpson
Assistant Attorney General
Open Records Division

GTS/seg

Ref: ID# 145424

Encl: Submitted documents

cc: Mr. Bryan Euwer
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(w/o enclosures)