



December 14, 2001

Ms. Victoria J.L. Hsu
Executive Director
Texas Board of Professional Engineers
1917 IH 35 South
Austin, Texas 78741

OR2001-5857

Dear Ms. Hsu:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156149.

The Texas Board of Professional Engineers (the "board") received a request for information relating to a specific board investigation file. You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You raise the informer's privilege to protect the identity of a complainant who alleged that two individuals were violating sections 1.1 and 1.2 of the Texas Engineering Practice Act (the "Act"), article 3271a, V.T.C.S. The informer's privilege, incorporated into the Public Information Act by section 552.101,¹ has long been recognized by Texas courts. *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). 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 (1988) at 3, 208 (1978) at 1-2. 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

¹Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

enforcement within their particular spheres.” Open Records Decision No. 279 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)); *see Roviario v. United States*, 353 U.S. 53, 59 (1957). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5.

The submitted information involves a concluded investigation of an alleged violation of the Act. *See* V.T.C.S. article 3271a, §§ 1.2, 1.1. The board has the duty of enforcement of the Act’s provisions. *See id.* §§ 8, 3. Further, the board has the power to impose administrative and criminal penalties for a violation of the Act’s provisions. *See id.* §§ 23, 22C, 8. After review of your arguments and the submitted information, we conclude that the informer’s privilege applies to information that identifies the complainant. The content of an informer’s communication may be withheld where it is necessary to protect the informer’s identity. *See* Open Records Decision Nos. 582, 579 (1990), 377 (1983). Thus, based on section 552.101, the board may withhold all information that would serve to identify the complainant.

The submitted information contains a social security number that is confidential under section 552.101 in conjunction with section 56.001 of the Occupations Code, which provides:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 56.001. The social security number that we have marked in the submitted information belongs to a licensee of the board, and is thus made confidential under section 56.001. Accordingly, the board must withhold this marked social security number under section 552.101 in conjunction with section 56.001 of the Occupations Code.

The information at issue also contains an individual’s bank account number. The Seventy-seventh Legislature passed Senate Bill 694, signed by the Governor and effective May 26, 2001, which added a new section 552.136 of the Government Code.² This newly enacted exception makes certain account numbers confidential. It provides in relevant part:

²The Legislature also enacted two other bills that add a section 552.136 to chapter 552. One is House Bill 2589, which makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (codified at Gov’t Code § 552.136). The other is Senate Bill 15, which makes information maintained by family violence shelter centers confidential. *See* Act of May 14, 2001, 77th Leg., R.S., S.B. 15, § 1 (codified at Gov’t Code § 552.136). In addition, Senate Bill 694 enacted the same language from House Bill 2589 regarding the confidentiality of e-mail addresses, but codified it as section 552.137 of the Government Code. *See* discussion *infra*.

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;
or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked the bank account number that the board must withhold pursuant to section 552.136 of the Government Code.

Finally, the submitted information contains an e-mail address that is excepted from disclosure pursuant to section 552.137 of the Government Code. Section 552.137 makes certain e-mail addresses confidential,³ and provides in relevant part:

Sec. 552.137. CONFIDENTIALITY OF CERTAIN E-MAIL ADDRESSES.

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

³House Bill 2589, which also makes certain e-mail addresses confidential, took effect on September 1, 2001. See Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (codified at Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

Gov't Code § 552.137. You do not inform us that the member of the public whose e-mail address appears in the submitted information has consented to its release. Therefore, where it appears in the submitted information, we have marked the e-mail address that is confidential and must be withheld from disclosure under section 552.137. We note, however, that the requestor in this case provided one of the e-mail addresses appearing in the submitted information. The requestor has a special right of access to his own e-mail address under section 552.023. Section 552.023(a) provides that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Therefore, the board must release the remaining submitted information, including the requestor’s social security number, to the requestor.

In summary, the board must withhold the information we have marked under section 552.101 of the Government Code in conjunction section 56.001 of the Occupations Code, and under sections 552.136 and 552.137 of the Government Code. The board may withhold the information we have marked under section 552.101 in conjunction with the informer’s privilege. The remaining submitted information must be released to the requestor.

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

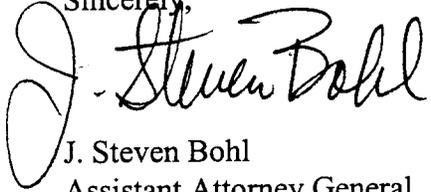
should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Texas Building and Procurement 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,



J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 156149

Enc: Submitted documents

c: Mr. Jim Cunningham
c/o Victoria J.L. Hsu
(w/o enclosures)