



September 4, 2002

Ms. Leigh Sebastian
Associate General Counsel
LCRA
P.O. Box 220
Austin, Texas 78767-0220

OR2002-4952

Dear Ms. Sebastian:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168285.

The Lower Colorado River Authority (the "LCRA") received a request for the following information:

1. All documents pertaining to LCRA Violation Investigation Report Tracking Number C02-0098 1694 pertaining to the septic tank on property at 6003 Rittenhouse Shore Drive, Austin, Texas (dated 6/25/02) including, but not limited to, the name of the party or parties that filed the complaint.
2. All documents pertaining to the existing or any previous OSSF or septic systems that have been installed on above listed property, including blue prints, sizes, square footage, etc.
3. Any other information, documentation, or records pertaining to the septic tank at 6003 Rittenhouse Shore Drive, including how many square feet, bedrooms, and bathrooms that the existing tank is rated for.

You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The informer's privilege, incorporated into the Public Information Act by section 552.101, 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 at 3 (1988), 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).

You inform us that the LCRA is an authorized agent of the Texas Natural Resource Conservation Commission (the "TNRCC") with general responsibility for implementing and enforcing the rules promulgated by the TNRCC regarding on-site sewage facilities as prescribed by chapter 366 of the Health and Safety Code. *See* Health & Safety Code § 366.011; 30 T.A.C. § 285.10. As an authorized agent, the LCRA is charged with investigating complaints and taking appropriate and timely enforcement action in accord with section 285.71 of title 30 of the Texas Administrative Code, which may include criminal or civil enforcement action under the authority of an order, ordinance, resolution, the Texas Water Code, or the Texas Health and Safety Code. *See* 30 T.A.C. §§ 30.33, 285.71. You seek to withhold the identifying information of the complainant who provided the LCRA with information regarding an alleged violation of the TNRCC regulations for on-site sewage facilities. We conclude that the LCRA may withhold the information that we have marked under section 552.101 in conjunction with the informer's privilege because it is information that reveals the complainant's identity. 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 168285

Enc. Submitted documents

c: Mr. Russell Mullins
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(w/o enclosures)