OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

December 20, 2002

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

OR2002-7326

Dear Mr. Gibson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173672.

The Texas Board of Architectural Examiners (the "board") received a request for the records pertaining to the requestor's business. You state that the board has released most of the requested information. You contend, however, that certain other information is excepted from required public disclosure pursuant to sections 552.101 and 552.111 of the Government Code.[1]

We note at the outset that the submitted information includes a completed "Investigation Report" that is subject to section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part as follows:

> (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:
>
> > (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

[1]We note that you have withdrawn your section 552.103 claim.

Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. Consequently, the Investigation Report must be released in its entirety under section 552.022 except to the extent the information is expressly made confidential under other law. You claim that some of the information contained in the Investigation Report is protected from disclosure pursuant to section 552.111 of the Government Code. Section 552.111 of the Government Code is a discretionary exception under the Public Information Act and does not constitute "other law" for purposes of section 552.022. Open Records Decision No. 473 (1987) (governmental body may waive section 552.111). Consequently, no portion of the Investigation Report may be withheld under section 552.111.

You also contend that other portions of the Investigation Report are excepted from public disclosure pursuant to the informer's privilege. However, like section 552.111 discussed above, the common-law informer's privilege, as incorporated into the Public Information Act by section 552.101,[2] exists only to protect a governmental body's interest. Therefore, the common-law informer's privilege, as incorporated into section 552.101, may be waived by a governmental body and is not "other law" that makes the information confidential under section 552.022. Open Records Decision No. 549 at 6 (1990). However, the informer's privilege is also found in Rule 508 of the Texas Rules of Evidence. Recently, the Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will determine whether the information you have marked in the Investigation Report as coming within the informer's privilege is confidential under Rule 508.

Rule 508 of the Texas Rules of Evidence provides, in relevant part:

> (a) Rule of Privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.
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> (b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished, except the privilege shall not be allowed in criminal cases if the state objects.

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[2]Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Thus, an informer's identity is confidential under Rule 508 if a governmental body demonstrates that an individual has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation, and the information does not fall within the purview of the exceptions to the privilege enumerated in Rule 508(c). The statements at issue here were reported to the board; they were not made to "a law enforcement officer or member of a legislative committee or its staff conducting an investigation." Therefore, the identity of the person who furnished the information contained in the Investigative Report is not protected under the informer's privilege as provided in Rule 508 of the Texas Rules of Evidence. We therefore conclude that the Investigation Report must be released to the requestor in its entirety.

We now address your arguments regarding the remaining information at issue. You contend that certain information contained in the remaining requested records is excepted from disclosure pursuant to section 552.101 in conjunction with the common-law informer's privilege. The common-law informer's privilege has long been recognized by Texas courts and is incorporated into the Public Information Act by section 552.101. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *see also Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege 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. *See* Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege also 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." *See* 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 carrying a civil or criminal penalty. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988).

You state that several individuals reported a possible violation of the interior design registration act, article 249e of Vernon's Texas Civil Statutes ("V.T.C.S."), to the board. *See* V.T.C.S. art. 249e. You specifically inform us that these individuals allege violations of section 3 of article 249e, which prohibits the use of the title "Interior Designer" by anyone who is not registered as an interior designer. We note that a violation of article 249e of V.T.C.S. carries potential criminal penalties. *See* V.T.C.S. art. 249e, § 16. Therefore, we conclude that the board may withhold from disclosure the identifying information of the complainants that you have marked in the remaining submitted records pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, the board must release the Investigation Report in its entirety. However, the board may withhold the remaining information you have marked as coming within the common-law informer's privilege; the remaining submitted information must be released.

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,

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/RWP/lmt

Ref: ID# 173672

Enc: Submitted documents

c: Ms. Lynda H. Bliss
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(w/o enclosures)