OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 17, 2003

Ms. Myrna S. Reingold
Galveston County Legal Department
4127 Shearn Moody Plaza
123 Rosenburg
Galveston, Texas 77550-1454

OR2003-1815

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178014.

The Galveston County Health District (the "district") received a request for information relating to fines, reprimands, and complaints concerning licensed septic system installers for a specified period of time and a permit soil and site survey for a certain property. You state that you have released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code and Texas Rule of Evidence 508. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You inform this office that the complaints relate to septic system installers, who are subject to chapter 366 of the Health and Safety Code. We note that the complaints concern the improper installation of sewage disposal systems, a violation under chapter 366. You state that violations of chapter 366 constitute misdemeanor offenses, and that pursuant to sections 366.031, 366.032, and 366.033 of the Health and Safety Code, the district has been designated an authorized agent of the Texas Commission on Environmental Quality with the authorization to implement and enforce chapter 366. *See* Health & Safety §§ 366.031-.033. Accordingly, we agree that section 552.101, in conjunction with the common-law informer's privilege, excepts from disclosure the identities of the individuals who filed the complaints. Thus, you may withhold these complainants' identifying information from disclosure under section 552.101. As we base our conclusion on section 552.101, we need not address your remaining arguments.

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 Dep't of Pub. 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,

V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 178014

Enc: Submitted documents

c: Mr. Keith E. Bullington
1702 Country Meadow Lane
Sante Fe, New Mexico 77517
(w/o enclosures)