



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2008

Mr. Matthew C.G. Boyle
Boyle & Lowry, L.L.P.
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2008-09508

Dear Mr. Boyle:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 315527.

The City of Colleyville (the "city"), which you represent, received a request for a specified complaint filed against the requestor. You state that you have released a redacted copy of the complaint to the requestor. You claim that the submitted complaint is excepted from disclosure in its entirety under section 552.108 of the Government Code. Alternatively, you claim that the redacted portion of the complaint is excepted under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the applicability of section 552.007 of the Government Code to the requested information. Section 552.007 provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See* Gov't Code 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive

exceptions to disclosure under the Act, but it may not disclose information made confidential by law). As stated above, you state that you have already released a copy of the complaint to the requestor. You inform this office that, in releasing the report, the city redacted the complainant's name and home phone number. We find that, pursuant to section 552.007, the city may not now withhold previously released information unless its release is expressly prohibited by law. Although you now seek to withhold the entire complaint under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 does not prohibit release of information or make information confidential under law. *See* ORD 177 at 3 (statutory predecessor to Gov't Code § 552.108 did not prohibit release of information). Therefore, because the city has released the redacted complaint to the requestor, the city may not now withhold such information under section 552.108 of the Government Code. We will, however, address your arguments regarding the information you redacted from the complaint, as this information has not yet been released to the public.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You claim that the identifying information of the complainant, which you have highlighted, may be withheld pursuant to the common-law informer's privilege. Section 552.101 encompasses the common-law informer's privilege, which 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. The privilege excepts an informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You state that a citizen called the city to report a sign ordinance violation. You state that the city's Community Development Department enforces this ordinance, which is an "enforceable criminal regulation." You also inform us that the complainant's name has been kept confidential. Based on your representations and our review, we conclude that the city has demonstrated the applicability of the common-law informer's privilege in this instance.

Thus, the city may withhold information identifying the complainant, which you have marked, pursuant to section 552.101 of the Government Code in conjunction with the informer's privilege. As our ruling is dispositive, we need not address your argument under section 552.108 for the previously redacted information. The remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge 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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read "Reg Hargrove", with a long horizontal flourish extending to the right.

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eb

Ref: ID# 315527

Enc. Submitted documents

c: Mr. Von Husbands
4913 Colleyville Boulevard
Colleyville, Texas 76034
(w/o enclosures)