



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2010

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2010-01969

Dear Ms. Shortall:

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# 370083.

The City of Arlington (the "city") received a request for the complete code enforcement file on a specified property. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit B pertains to a pending investigation being conducted by the city's Code Enforcement Division (the "division"). You inform this office that the division "enforces [c]ity and state law regarding health and safety conditions in the exercise of the [c]ity's police powers." Based on this representation, we find the division to be a law enforcement agency for the purposes of section 552.108. Furthermore, you have provided documentation showing the information at issue concerns alleged violations of city ordinances that constitute misdemeanors, which

are currently pending with the Arlington Municipal Court. Accordingly, we conclude the release of Exhibit B would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We note, however, Exhibit B includes a copy of a citation. Because the citation was provided to the individual who violated the city code, we find release of the copy of the citation will not interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). We therefore conclude the copy of the citation we have marked may not be withheld under section 552.108(a)(1). As you raise no other exceptions against disclosure of this citation, it must be released. Thus, except for the copy of the citation, Exhibit B may be withheld under section 552.108(a)(1) of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. The informer's privilege, incorporated into the 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).

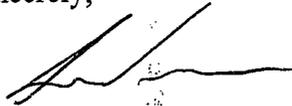
Exhibit C contains identities of complainants who reported violations of various city ordinances relating to health and safety conditions to the division. As previously discussed, the division is charged with enforcing these ordinances. You have provided us with information showing violations of these ordinances carry criminal penalties punishable by fines. Having considered your representations and reviewed the information at issue, we agree some of the information you seek to withhold may be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, some of the information you have marked does not identify an individual who reported alleged violations to the division. Such information is not protected under section 552.101 in conjunction with the common-law informer's privilege and may not be withheld on that basis. Therefore, the city may withhold only the information we have marked in Exhibit C under section 552.101 in conjunction with the common-law informer's privilege.

In summary, except for the marked citation, the city may withhold Exhibit B under section 552.108(a)(1) of the Government Code. The city may withhold the information we have marked in Exhibit C under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 370083

Enc. Submitted documents

c: Requestor
(w/o enclosures)