



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 3, 2012

Mr. Vic Ramirez  
Associate General Counsel  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220

OR2012-15758

Dear Mr. Ramirez:

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# 466764.

The Lower Colorado River Authority (the "LCRA") received a request for a specified complaint and septic file. You state you will release some of the requested information. 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.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the request was received by the LCRA. This ruling does not address the public availability of the information that is not responsive to the request, and the LCRA is not required to release this information in response to this request.

Section 552.108 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). As you acknowledge, section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is the investigation of crimes and enforcement of criminal laws. See

Open Records Decision Nos. 493 (1988), 287 (1981). Section 552.108 is generally not applicable to records created by an agency whose chief function is essentially regulatory in nature. *See* Open Records Decision No. 199 (1978). 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* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You inform us the LCRA was designated by the Texas Commission of Environmental Quality (the "commission") as an authorized agent to implement and enforce rules pursuant to chapter 366 of the Health and Safety Code. *See* Health & Safety Code § 366.031 (commission shall designate authorized agent if certain criteria are met); 30 T.A.C. § 285.10 (delegation of authorized agent). As an authorized agent, you state the LCRA is charged with enforcing on-site sewage facility ("OSSF") violations pursuant to chapter 366 and chapter 7 of the Water Code. You state the LCRA adopted rules regarding on-site sewage disposal systems through the order designating the LCRA as an authorized agent. *See* Health & Safety Code § 366.032 (authorized agent must incorporate the commission's rules on abatement and prevention of pollution and injury to public health or adopt more stringent standards into its order). Section 285.71 of title 30 of the Texas Administrative Code states an authorized agent shall investigate a complaint relating to an alleged OSSF violation and take timely action, which may include criminal or civil enforcement. Therefore, we agree the LCRA is a law enforcement agency for purposes of enforcing OSSF violations. You state the submitted complaint is related to an ongoing OSSF compliance investigation that includes a possible violation of the LCRA's order. Section 7.173(a) of the Texas Water Code states a person commits an offense if the person violates an order adopted by an authorized agent under subchapter C of chapter 366 of the Health and Safety Code. You inform us an offense under section 7.173(a) is a misdemeanor. *See* Water Code § 7.173(b) (offense under section 7.173(a) is Class C misdemeanor). You state release of this information 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, based on your representations and our review, we find section 552.108(a)(1) is applicable to the responsive information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information, the LCRA may withhold the responsive information under section 552.108(a)(1) of the Government Code.

We understand you to claim a portion of the basic information is protected under section 552.101 of the Government Code in conjunction with the common-law informer's

privilege. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *E.g.*, *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). 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 the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 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 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. 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 (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 state the basic information reveals the identity of an individual who reported a possible OSSF violation to the LCRA and the LCRA is charged with enforcing such violations. As noted above, an OSSF violation is a misdemeanor. Therefore, we conclude the LCRA may withhold the information we have marked in the basic information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The remaining basic information, however, does not identify an individual who reported a violation of the law, and the LCRA may not withhold any of it under section 552.101 on that basis.

In summary, with the exception of the basic information, which must be released, the LCRA may withhold the responsive information under section 552.108(a)(1) of the Government Code. In releasing the basic information, the LCRA may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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](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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza". The signature is fluid and cursive, with a large, stylized initial "M" and "G".

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 466764

Enc. Submitted documents

c: Requestor  
(w/o enclosures)