



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. BILL  
ATTORNEY GENERAL**

**April 4, 1977**

**The Honorable John Ross  
City Attorney  
Room 303, City-County Building  
El Paso, Texas 79901**

**Open Records Decision No. 156**

**Re: Whether the Open  
Records Act requires release  
of the name of a person  
who made a complaint to a  
city's animal control  
division.**

**Dear Mr. Ross:**

You have requested our decision as to whether the Open Records Act, article 6252-17a, V.T.C.S., requires the release of the name of a person who makes a complaint to a city's animal control division. You state that an individual complained to the Division of Animal and Rabies Control of the Department of Veterinary Science of the City of El Paso that another person had failed to properly feed and care for his dog and had frequently abandoned the animal. City animal control agents investigated the complaint and found no basis therefor. The individual who was the subject of the complaint now seeks disclosure of the identity of the informant.

You contend that the informant's identity is excepted from required public disclosure by section 3(a)(8) of the Open Records Act, which excepts from disclosure

records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement.

See Open Records Decision No. 127 (1976). It is not clear whether the Division is a "law enforcement agency" for purposes of section 3(a)(8). See Open Records Decision Nos. 85 (1975); 27 (1974). We need not make this determination, however, since we believe that the identity of the informant is excepted from disclosure by section 3(a)(1), which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

In Open Records Decision No. 49 (1974) at 2, we held that the identity of a complainant in a case of child abuse is excepted from disclosure by section 3(a)(1), "as information deemed confidential by judicial decisions recognizing the informer's privilege." In Roviaro v. United States, 353 U.S. 53 (1957), the United States Supreme Court explained the rationale which underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law . . . . The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation. Id. at 59.

The privilege has long been recognized by Texas courts. See Aguilar v. State, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); Thayer v. State, 397 S.W.2d 237, 234 (Tex. Crim. App. 1966); Arredondo v. State, 324 S.W.2d 217, 218 (Tex. Crim. App. 1959); Hawthorne v. State, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928).

In the present instance, the information conveyed by the complainant indicated the potential violation of a state statute. Section 42.11(a) of the Penal Code provides that

[a] person commits an offense if he intentionally or knowingly . . .

(2) fails unreasonably to provide necessary food, care, or shelter for an animal in his custody; [or]

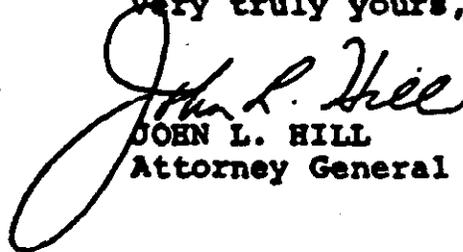
(3) abandons unreasonably an animal in his custody. . . .

Furthermore, the informant's privilege is not limited to those communications which are made to the police or other peace officers. Professor Wigmore states that, although the privilege ordinarily extends only to the police and officials of criminal justice generally,

it may also include administrative officials having a duty of inspection or of law-enforcement in their particular spheres. The truth is that the principle is a large and flexible one. It applies wherever the situation is one where without this encouragement the citizens who have special information of a violation of law might be deterred otherwise from voluntarily reporting it to the appropriate official. Wigmore, Evidence, § 2374, at 767-68 (McNaughton Rev. 1961).

In our opinion, the informant's privilege is applicable in a situation in which a complainant furnishes to the appropriate officials information which would indicate a possible violation of section 42.11 of the Penal Code. Thus, it is our view that section 3(a)(1) of the Open Records Act excepts from required public disclosure the name of a person who makes a complaint about another individual to a city's animal control division, so long as the information furnished discloses a potential violation of state law. We note that this decision is in harmony with the view of the need to protect the identity of informants which the court expressed in Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177, 187 (Tex. Civ. App. -- Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976).

Very truly yours,



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DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee