



The Attorney General of Texas

August 17, 1978

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Honorable Jerry L. Harris
City Attorney
P. O. Box 1088
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Open Records Decision No. 202

Re: Whether a complaint to a city concerning a subcontractor's administration of a CETA-funded project is public under the Open Records Act.

Dear Mr. Harris:

Pursuant to section 7 of article 6252-17a, V.T.C.S., the Texas Open Records Act, you ask whether a transcript of a typed conversation in which various allegations concerning mismanagement of a public service program were made is public information. The allegations were made by a former employee of a project funded by the City of Austin with federal money received under the Comprehensive Employment and Training Act (CETA).

We understand that upon investigation it was determined that some of the allegations could not be substantiated, and that other problems were resolved informally. The matter did not proceed to a hearing, none was requested, and no further action is contemplated at this time.

You refer us to a federal regulation which applies to CETA-funded projects which provides: "The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purpose of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder." 29 C.F.R. § 98.45(b) (1977). You ask whether this provision makes the information confidential by law under section 3(a)(1) of the Texas Open Records Act and thus excepts it from required public disclosure.

It is not clear whether this regulation applies to the statement of the complainant in this case. The subpart of which the regulation is a part, subpart C, including sections 98.40 - 98.49, establishes a procedure by which formal complaints may be made to the Department of Labor. The complaint in this case was made to the prime sponsor, the City of Austin. The regulations recognize this distinction by requiring that the administrative

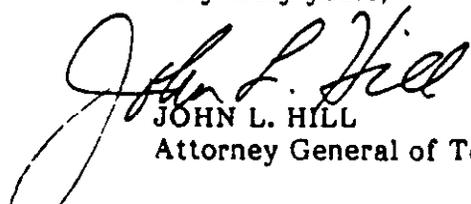
remedies of the prime sponsor be exhausted before any of the procedures in subpart C can be utilized. 29 C.F.R. § 98.40(c) (1977). The transcript of the statement here was made as a part of the administrative process of the City of Austin and not under the procedures stated in subpart C.

It is possible that required disclosure of a complainant's identity by the prime sponsor at this level of investigation might defeat the purpose of the regulation, even though the regulation only appears to pertain to formal complaints made to the Department of Labor. However, the facts of this case indicate that the complainant's identity is already known, as are portions of the complaint. The regulation recognizes that the identity might be disclosed in the course of an investigation or other proceeding.

The regulation is drawn along the lines of the judicially recognized informer's privilege, which we have held makes information confidential by law under section 3(a)(1). Open Records Decision Nos. 183 (1978); 176, 172, 156 (1977); 49 (1974). However, "once the identity of the informer has been disclosed to those who would have cause to resent the communication, the privilege is no longer applicable." Roviaro v. United States, 353 U.S. 53, 60 (1957) (footnote omitted). See VIII Wigmore, Evidence § 2374(2) at 766 (McNaughton Rev. 1961). We believe this limitation on the privilege is applicable here, since there is no doubt as to the identity of the person making the complaint. The purpose of the regulation has already been defeated since the identity of the complainant is known to those most affected, such as the requestor in this case.

It is our decision that on the facts presented here, the regulation intended to protect the identity of a complainant is not applicable since that fact is already known, and that section 3(a)(1) does not except the information requested from disclosure.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED


C. ROBERT HEATH, Chairman
Opinion Committee

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