



RC 411

The Attorney General of Texas

September 14, 1981

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Equal Opportunity/
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Honorable Don Rorschach
Assistant City Attorney
City of Irving
825 West Irving Blvd.
Irving, Texas 75060

Open Records Decision No. 279

Re: Whether name of person
who reports zoning violation
is open to the public

Dear Mr. Rorschach:

You have requested our decision as to whether the identity of a person who reports a zoning ordinance violation is available to the public. You suggest that the information is excepted from disclosure by sections 3(a)(1), 3(a)(8) and 3(a)(11) of the Open Records Act, article 6252-17a, V.T.C.S. You state that the person who violated the ordinance is subject to prosecution in municipal court.

You first contend that the identity of the complainant is excepted by section 3(a)(1), as information deemed confidential by the informer's privilege. On the basis of Roviaro v. United States, 353 U.S. 53 (1957), this office has on several occasions held the informer's privilege applicable to communications made to law enforcement officials regarding the alleged commission of a crime. See, e.g., Open Records Decision Nos. 172, 156 (1977).

In Westinghouse Electric Corporation v. City of Burlington, Vermont, 351 F.2d 762 (D.C. Cir. 1965), the court discussed the rationale for the privilege:

The purpose of the privilege is not to protect the particular informer from retaliation, but to protect the flow of information to the Government....[I]t rests on the assumption that a citizen, recognizing the risk of retaliation, will be more likely to inform if he knows that his identity will be kept secret. The privilege is maintained to encourage possible informers in the future by giving them some assurance of anonymity.

351 F.2d at 768.

Although the privilege is usually invoked in the context of a criminal case, it applies as well to administrative officials having a

duty of inspection or of law enforcement within their particular spheres. Wigmore, Evidence, §2374, at 767 (1961 ed.), and cases cited therein. The Federal Trade Commission, for example, refuses to disclose the identity of complainants. 16 C.F.R. §2.2(d). In Evans v. Department of Transportation of the United States, 446 F.2d 821 (5th Cir. 1971), the Court of Appeals for the Fifth Circuit upheld the refusal by the Federal Aviation Administration to release a letter which charged an airplane pilot with acts indicative of behavior disorder and mental abnormality. The administrator of the agency, who relied on the law enforcement exception in the federal Freedom of Information Act, had determined that disclosure of the information would adversely affect the interest of the informant. The court observed that, if the information were released to the pilot:

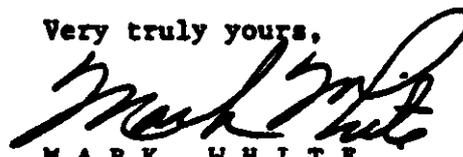
...few individuals, if any, would come forth to embroil themselves in controversy or possible recrimination by notifying the Federal Aviation Agency of something which might justify investigation.

446 F.2d at 824.

As we have noted, the person who violated the zoning ordinance in question is subject to prosecution in municipal court. The violator would, therefore, be guilty of a criminal offense--specifically, a Class C misdemeanor. See Code Crim. Proc. art. 4.14 (jurisdiction of municipal court); Penal Code §12.23.

We conclude that the identity of a person who reports a zoning violation is excepted from disclosure by section 3(a)(1) of the Open Records Act, as "information deemed confidential by...judicial decision," i.e., the informer's privilege.

Very truly yours,



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