



# The Attorney General of Texas

May 5, 1983

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An Equal Opportunity/  
Affirmative Action Employer

Mr. Lee Clark  
Assistant City Attorney  
City Hall  
Pasadena, Texas 77501

Open Records Decision No. 377

Re: Whether affidavits alleging criminal conduct by city employee are open to the public under the Open Records Act

Dear Mr. Clark:

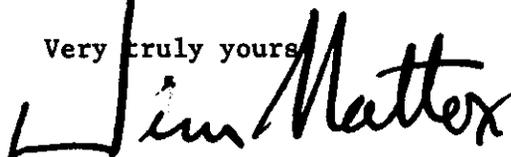
You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether affidavits alleging criminal conduct by a city employee are subject to disclosure to that employee. You assert that the affidavits are excepted from disclosure under sections 3(a)(1), 3(a)(3), and 3(a)(8) of the act. These sections except from disclosure, respectively, information deemed confidential by law; information relating to litigation; and records relating to law enforcement agencies. We conclude that the requested information is excepted from disclosure under section 3(a)(1), specifically the "informer's privilege."

We first note that this requestor does not, because he is a city employee, enjoy any "special right of access" to the requested information. If the information is within one of the foregoing sections it may be withheld from him as well as from others. See, e.g., Open Records Decision No. 288 (1981).

This office has repeatedly held that the content of an informer's communication is privileged in instances where its disclosure would tend to reveal the informant's identity. Open Records Decision Nos. 320 (1982); 285 (1981); 252 (1980); 172 (1977). When the conduct alleged in the communication is criminal, the informer's privilege may be invoked by the custodian of the records. Open Records Decision No. 279 (1981) (informer's privilege applies to the identity of a person who reports a zoning violation, a class C misdemeanor). The informer's privilege is intended to encourage persons to report possible misconduct without their identities being disclosed. Open Records Decision Nos. 230 (1979); 183 (1978); 172 (1977). See also Attorney General Opinion MW-575 (1982). Its purpose in protecting an informant's anonymity is to protect him from the fear of retaliation. Open Records Decision No. 208 (1978).

The requested information consists of affidavits alleging criminal conduct on the part of a city employee. The affidavits were submitted to the supervisor of the city department, who subsequently delivered them to the personnel office and police department. We conclude that, in this instance, the informer's privilege may be invoked in order to protect the identities of the informants. If the allegations are correct, violations of criminal statutes have clearly occurred. Because we conclude that the requested information is excepted from disclosure under section 3(a)(1), we need not discuss exceptions from disclosure under sections 3(a)(3) or 3(a)(8).

Very truly yours



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