



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

August 22, 1990

Mr. Robert E. Diaz  
Police Legal Advisor  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR90-400

Dear Mr. Diaz:

This is in response to your request for reconsideration of OR90-266. Your request was assigned ID# 10024.

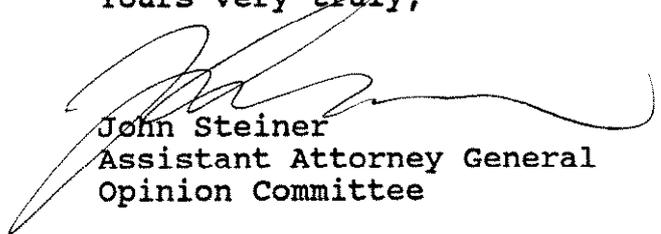
It is the rationale of OR90-266 that no third party interest was raised by your request for an attorney general decision. The informer's privilege belongs to and is waivable by the government at its sole discretion. The privilege "leaves the question how far and under what circumstances the names of informers and the channel of communication shall be suffered to be known, to the absolute discretion of the government, to be exercised according to its views of what the interests of the public require." 8 J. Wigmore, Evidence in Trials at Common Law § 2374 at 763 (McNaughten rev. 1961) (quoting Worthington v. Scribner, 109 Mass. 487 (1872)). Accordingly, the informer's privilege exists to protect the interests of the government and not those of the informer. In any event, the informer's privilege applies to information provided to governmental bodies alleging violations of the law with respect to which the governmental body has a duty of inspection. Open Records Decisions Nos. 549 (1990), 515 (1988). The information in question is, thus, not within the informer's privilege.

As noted in OR90-266, the other exception you raise, i.e., 3(a)(11), absent a showing of a compelling reason for withholding the information, is lost due to the failure of the City of Arlington to make a timely request for an attorney general opinion. Open Records Decision No. 473 (1987). However, with respect to certain portions of the employment background investigation report, i.e., the second paragraph entered for 10/19/89, the last sentence of the second paragraph for the entry for 09/25/89, and the third paragraph of the entry for 09/25/89 (which carries over to the next page), you have asserted in our telephone

conversations concerns on the part of the informant which we believe are compelling. Consequently, that information may be withheld, but the balance of the information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-400.

Yours very truly,



John Steiner  
Assistant Attorney General  
Opinion Committee

JS/le

Ref.: ID# 10024, 10235

Enclosure: Marked Documents

cc: Gordon J. Lundy  
13355 Northborough #1706  
Houston, Texas 77067-1710