



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 23, 1992

Ms. Lena Guerrero
Chairman, Railroad Commission
1701 North Congress
Capitol Station, P. O. Box 12967
Austin, Texas 78711-2967

OR92-421

Dear Ms. Guerrero:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16623.

The Railroad Commission of Texas (the "commission") received an open records request asking for a copy of a complaint made about an unlicensed carrier, the identity of the complainant, and "enough specific information regarding the complaint in order to help the [requestor¹] identify the event in question." You submitted two documents for us to review. You believe that the first document, marked "Exhibit 2," is entirely excepted from disclosure by the informer's privilege recognized under section 3(a)(1) of the Open Records Act. This document identifies a complainant and contains the complainant's statement. You also believe that a portion of the second document, marked "Exhibit 3," falls within the informer's privilege; this portion identifies a complainant and the complainant's city and phone number. You indicate that you have already released the remainder of the second document to the requestor.

We agree that the informer's privilege permits you to withhold the information you seek to withhold. The informer's privilege permits a governmental body to withhold information that would reveal the identity of persons who report possible violations of the law to the officials charged with enforcing that law. Open Records Decision No. 462 (1987) at 14. For the purposes of the informer's privilege, possible violations of the law include violations of statutes with either civil

¹The request was actually made on behalf of the requestor by the attorney for the requestor, a credit union. However, for simplicity's sake, we will refer to the credit union as the requestor.

or criminal penalties. Open Records Decision No. 515 (1988) at 2. Under the informer's privilege, the names and addresses of informers can be withheld. See Open Records Decision No. 355 (1982). In addition, if the content of the informer's communication would tend to reveal the informer's identity, the privilege protects the communication itself, to the extent necessary to protect the informer's anonymity. Open Records Decision No. 549 (1990) at 5.

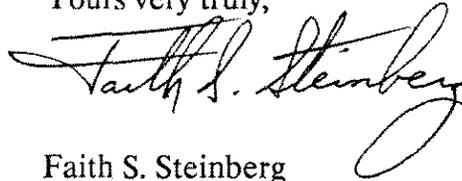
The identity of the complainant in this case is clearly excepted from disclosure under this rule. The commission is the agency charged with administering and enforcing the laws and rules relating to motor carriers. V.T.C.S. art. 911b, § 4(a)(1). You inform us that the commission received information from one or more complainants that prompted an investigation to determine whether a motor carrier was making regulated hauls without proper authority from the commission and whether the requestor was using this motor carrier for regulated hauls. Both of these activities are unlawful and could result in civil or criminal penalties. V.T.C.S. art. 911b, § 3 (prohibiting motor carriers from operating on state highways without a certificate from the commission); V.T.C.S. art. 911b, § 16(a), (b) (imposing criminal and civil penalties on anyone who violates the act or who aids and abets a violation of the act). Thus, the informer in this case was reporting a possible violation of the law to the agency charged with enforcing the law, and his or her identity can be protected.

We also conclude that the statement contained in "Exhibit 2" is excepted from disclosure by the informer's privilege. As you indicate, this statement is in a complainant's handwriting. More importantly, however, the statement is a highly personal narrative and alleges facts that might reveal the identity of the complainant. See Open Records Decision No. 549 (1990) at 5. The allegations that might reveal the complainant's identity cannot be separated from the information that would not reveal the complainant's identity. Therefore, the informer's privilege excepts all of "Exhibit 2" from disclosure.

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 OR92-421.

Yours very truly,



Faith S. Steinberg
Assistant Attorney General
Opinion Committee

FSS/MAR/lmm

cc: Ms. Sharon Holladay
Blalack & Williams
Williams Square East
5221 North O'Connor Blvd., Suite 834
Irving, Texas 75039-3733