



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 12, 1993

Mr. Rodman C. Johnson
Staff Attorney
Legal Division
Texas Air Control Board
12124 Park Circle
Austin, Texas 78753

OR93-146

Dear Mr. Johnson:

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# 18941.

The Texas Air Control Board (the "board") has received a request for information concerning a certain livestock and feed company. Specifically, the requestor seeks all information in the board's possession that relates to the company. You do not object to release of most of the requested information and advise us that this information will be made available to the requestor. You object, however, to information that identifies or tends to identify complainants and claim that this information is excepted from required public disclosure by section 3(a)(1) of the Open Records Act in conjunction with the informer's privilege.

Section 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law [citations omitted]. The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of *citizens* to communicate their knowledge of the commission of crimes to law-enforcement officials and, by

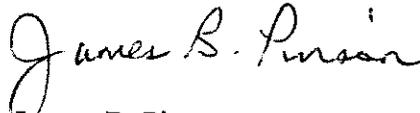
preserving their anonymity, encourages them to perform that obligation. (Emphasis added.)

The informer's privilege aspect of section 3(a)(1) protects the identity of persons who report violations of the law. The content of an informer's communication may be withheld where it is necessary to protect the informer's identity. Open Records Decision No. 377 (1983). When information does not describe conduct that violates the law, the informer's privilege does not apply. Open Records Decision Nos. 515 (1988); 191 (1978). Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285, 279 (1981); *see also* Open Records Decision No. 208 (1978).

The board is charged with the powers and duties necessary to administer the Texas Clean Air Act (the "act"), chapter 382 of the Health and Safety Code, one of the purposes of which, is to safeguard the state's air resources from pollution. Health & Safety Code §§ 382.002 (purpose), 382.011 (powers and duties). The board has extensive regulatory and investigatory authorities under the act. *See, e.g.*, Health & Safety Code §§ 382.011, 382.017, 382.037, 382.038, 382.051 - .096. You have submitted to us for review documents that report violations of the act and rules issued by the board under the act. Section 382.091 provides, in pertinent part: "(a) A person commits an offense if the person (1) intentionally or knowingly, with respect to the person's conduct, violates: . . . (E) an order, permit, rule, or exemption issued under this chapter." Section 382.092 provides criminal penalties for violations of section 382.091(a)(1). We have examined the documents submitted to us for review and conclude that they contain information identifying or tending to identify the informers. We also conclude that release of the content of the informers' communications reveals the informers' identities. Accordingly, the documents submitted to us for review may be withheld from required public disclosure under section 3(a)(1) of the Open Records Act in conjunction with the informer's privilege.

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 OR93-146.

Yours very truly,



James B. Pinson
Assistant Attorney General
Opinion Committee

JBP/GCK/le

Ref: ID# 18941
ID# 19011

cc: Mr. Wayne Hudson
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