



Office of the Attorney General  
State of Texas

June 30, 1993

DAN MORALES  
ATTORNEY GENERAL

Ms. Sandra C. Joseph  
Open Records Counsel/Disclosure Officer  
Comptroller of Public Accounts  
Austin, Texas 78774

OR93-395

Dear Ms. Joseph:

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# 20481.

The Comptroller of Public Accounts (the "comptroller") has received a request for information relating to a Local Revenue Funds Audit of the City of Grey Forest, Identification No. 1-74-1594085-1 for the period covering April 1, 1989, through December 1, 1992. Specifically, the requestor seeks "[a]ny audit plan, exhibits, work papers, notes, internal memoranda, letters and findings related to the aforementioned Local Revenue Funds Audit." You advise us that some of the requested information will be made available to the requestor. You have marked portions of the documents submitted to us for review 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.<sup>1</sup>

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:

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<sup>1</sup>Without expressly asserting section 3(a)(3), the "litigation exception," you also advise us that "the possibility of litigation remains open" with respect to this matter. You have provided us with no information, however, demonstrating that litigation to which the comptroller is a party is pending or reasonably anticipated. *See* Open Records Decision No. 551 (section 3(a)(3) protects information relating to pending or reasonably anticipated litigation to which the governmental body is a party). Accordingly, we have no basis for concluding that the information at issue here is excepted from required public disclosure by section 3(a)(3).

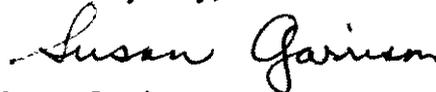
What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law [citations omitted]. The purpose of the privilege is the furtherance 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. 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). However, once the identity of an informer is disclosed to those who would have cause to resent the communication, the privilege is no longer applicable. *See* Open Records Decision No. 208 (1978) at 2.

The person whose identity you seek to protect here under the informer's privilege registered a complaint with the comptroller, alleging that the City of Grey Forest failed to report tickets and taxes to the State of Texas. However, the information you have submitted for our review shows that the "informer" brought a petition of forty-two signatures before the City of Grey Forest, alleging the same violations of law and requesting that a law enforcement agency investigate the matter. It appears, therefore, that the identity of the informer is known to those who would have cause to resent his communication. Accordingly, we conclude that the informer's privilege is inapplicable here and that the requested information must be released in its entirety.

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 contact this office.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee\*

SLG/GCK/jmn

Ref.: ID# 20481

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