



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 10, 1993

Mr. Ramon Dasch
Legal Division
Texas Water Commission
P. O. Box 13087
Austin, Texas 78711-3087

OR93-514

Dear Mr. Dasch:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 19906.

The Texas Water Commission (the "commission") received an open records request for information pertaining to the commission's investigation of possible soil pollution in the Amarillo area. You state that the commission has released to the requestor some of the requested information. However, you seek to withhold other records pursuant to the informer's privilege, as incorporated in section 3(a)(1) of the Open Records Act, because the individual¹ who submitted the records to the commission has requested that he "remain unidentified." You have submitted to this office for review a representative sample of the records at issue and further contend that

[d]isclosure of portions of these documents in combination with other information already available to the public would likely lead to a disclosure of the identity of the government's informant. The government informant clearly has a distinctive writing style which is easily recognizable. Therefore, we have deemed it appropriate to withhold the complete text of the relevant documents.

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:

¹You have informed a member of our staff that this individual is not a commission employee.

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.

Although the privilege ordinarily applies to the efforts of law enforcement agencies, it may apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 285 at 1, 279 at 1-2 (1981); *see also* Open Records Decision No. 208 (1978) at 1-2. This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988) at 3; 391 (1983) at 3. The individual in question clearly is reporting to the commission what he believes to be violations of the state's pollution laws.

The privilege does not, however, protect the contents of communications if they do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. at 60. You have not explained, nor is it apparent to this office, how the informant's "writing style"² would tend to reveal his identity. Nor have you explained or otherwise demonstrated how the release of this information "in combination with other information already available to the public" would tend to reveal the informant's identity. We therefore have no basis on which to conclude that the commission may withhold the requested materials in their entirety pursuant to the informer's privilege. We have marked those portions of the records you submitted to this office that appear to identify the informant; the commission may withhold only these and similar portions of the records at issue.

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 our office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/RWP/jmn

²The materials that you have submitted for review are all typewritten; thus we are not faced with the question of whether the informant's handwriting style alone would tend to reveal his identity.

Ref.: ID# 19906
ID# 20612

Enclosures: Marked documents

cc: Mr. Ruben Medina
P. O. Box 7904
Amarillo, Texas 79114
(w/o enclosures)