



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 27, 1994

Ms. Kathleen Henley
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR94-219

Dear Ms. Henley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 23953.

The City of McAllen (the "city") received an open records request for a copy of a complaint that an individual made against the requestor regarding alleged violations of the city's public nuisance ordinances. You have submitted to this office as responsive to the request a copy of a "complaint report" completed by an employee of the city's health department. You contend that the portions of the complaint report that reveal the complainant's name and telephone number are excepted from required public disclosure pursuant to the "informer's privilege."

Although you raise the informer's privilege in the context of section 552.108 of the Government Code, the privilege is most often deemed to be an aspect of section 552.101.¹ 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:

¹We also note that because the city's health department is not a "law enforcement agency" for purposes of section 552.108, that particular exception is inapplicable here. Cf. Attorney General Opinion MW-575 (1982). Generally, a non-law enforcement agency may claim section 552.108 with regard to an open file only where there is a reasonable probability of criminal prosecution. *Id.* In this particular

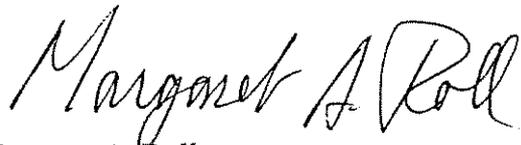
What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the 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.

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. *See* Open Records Decision Nos. 515 (1988) at 3; 391 (1983) at 3.

You have demonstrated that a violation of the nuisance ordinances constitutes a misdemeanor. We therefore conclude that the informer's privilege is applicable in this instance. Accordingly, the city may withhold the name and telephone number of the individual who reported the violation; the city must release all remaining information contained in the complaint report.

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,



Margaret A. Roll
Assistant Attorney General
Open Government Section

(Footnote continued)

instance, you have not made the requisite showing that the complaint has been referred to a law enforcement agency for prosecution.

MAR/RWP/rho

Ref: ID# 23953
ID# 26354

Enclosure: Submitted document

cc: Mr. Antonio Nunez
2240 Hackberry Avenue
McAllen, Texas 78501
(w/o enclosure)