



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Mr. Rex McEntire
Attorney for the City of
North Richland Hills
P. O. Box 820609
North Richland Hills, Texas 76182-0609

OR94-337

Dear Mr. McEntire:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 18580.

The City of North Richland Hills (the "city") has received a request for information relating to a certain complaint regarding a violation of the city animal control ordinance. Specifically, the requestor seeks the name of the complainant. You claim that the requested information is excepted from required public disclosure by former section 3(a)(1) of the Open Records Act (now found at section 552.101 of the Government Code) in conjunction with the informer's privilege.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The informer's privilege applies when a person reports violations of the law to officials having a duty to enforce the law. Open Records Decision No. 515 (1988) at 2; *see also* Open Records Decision No. 549 (1990) at 4-5 (incorporating the informer's privilege into section 3(a)(1)). The informer's privilege is the government's privilege and serves to encourage the flow of information to the government by protecting the identity of the informer. *Id.* The basis for the informer's privilege is to protect informers from the fear of retaliation and thus encourage them to cooperate with law enforcement efforts. *Id.* The informer's privilege under section 552.101 is applicable

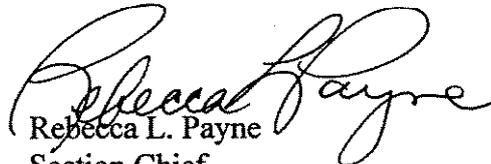
¹The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

not only to law enforcement agencies, but also to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 (1981) at 2 [citing Wigmore, Evidence § 2374, at 767 (McNaughton rev. ed. 1961) and cases cited therein]; *see also* Attorney General Opinion MW-575 (1982) at 2.²

You advise us that the complaint was made to the city's Animal Control Division, the agency of the city charged with enforcement of the city's animal control ordinance. The complaint communicated alleged violations of this particular ordinance. You advise us that a violation of the city's animal control ordinance constitutes a Class C misdemeanor. The complaint report submitted to us for review clearly documents a complaint regarding a possible violation of the law. We therefore conclude that the name, address, and telephone number of the informer may be withheld under the informer's privilege component of section 552.101 of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an 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,


Rebecca L. Payne
Section Chief
Open Government Section

RLP/GCK/rho

Ref.: ID# 18580

Enclosure: Submitted document

cc: Mr. Dave Chapman
10440 North Central Expressway, Suite 410
Dallas, Texas 75231
(w/o enclosure)

²Because the informer's privilege is the *government's* privilege to assert or waive, unlike other aspects of section 552.101, the informer's privilege is considered a discretionary exception under the Open Records Act. *See, e.g.*, Open Records Decision No. 549 (1990) at 6. Therefore, the governmental body may choose to release the information covered by this privilege, if it wishes, without fear of penalty. *See* Gov't Code § 552.007.