



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 24, 1994

Mr. Anthony C. Grigsby  
Executive Director  
Texas Natural Resource  
Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR94-492

Dear Mr. Grigsby:

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# 26101.

The Texas Natural Resource Conservation Commission ("TNRCC") has received a request for the name of a citizen who filed a complaint against the requestor. You wish to withhold the requested information. You believe section 552.101 of the Government Code, which incorporates the informer's privilege, excepts these items from required public disclosure.

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. 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. [Citations omitted.]

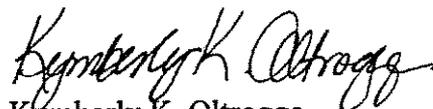
Although the privilege ordinarily applies to the efforts of law-enforcement agencies, it may apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 285 at 1, 279 at 1-2 (1981); *see also* Open Records Decision 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. Significantly, however, the privilege protects the content of communications only to the extent that it identifies the informant. *Roviaro*, 353 U.S. at 60.

You have informed this office that the complaint alleges violations of title 30 of the Texas Administrative Code section 330.5(a)(2), which prohibits a person from, among other things, collecting or storing municipal waste in such a manner as to create or maintain a public nuisance. You further aver that TNRCC is authorized to enforce the applicable laws and regulations. Finally, you state that a person who violates section 330.5(a)(2) is subject to administrative as well as civil penalties. *See* Health & Safety Code §§ 361.223, .252.

We agree that the informer's privilege applies to the requested information. We therefore conclude that, pursuant to section 552.101 of the Government Code, the department may withhold the complainant's name from the requestor.<sup>1</sup>

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 this office.

Yours very truly,



Kimberly K. Oltrogge  
Assistant Attorney General  
Open Government Section

KKO/LRD/rho

Ref.: ID# 26101

cc: Sgt. Douglas Williamson  
Rt. 6, Box 83  
Silsbee, Texas 77656

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<sup>1</sup>The informer's privilege, unlike other components of Government Code § 552.101, is discretionary. Open Records Decision No. 549 (1990) at 6. Thus, the TNRCC may choose to release the requested information with impunity.