



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 13, 1995

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-394

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government. Your request was assigned ID# 32711.

The City of Houston (the "city") received an open records request for "all city documents relating to the inspection of any Tire Recyclers Inc. facility in the City of Houston." You state that you have released to the requestor some of the requested records. You seek to withhold, however, other documents or portions of documents that you contend the city may withhold from the public pursuant to sections 552.101, 552.107(1), and 552.108 of the Government Code.¹

You first contend that the city may withhold the names of certain individuals contained in "Exhibit 3" pursuant to the informer's privilege, as incorporated into section 552.101 of the Government Code. 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 also originally contended that certain records designated as "Exhibit 5" come under the protection of section 552.111 of the Government Code. Because you have withdrawn this claim, we assume that the city has released to the requestor the contents of "Exhibit 5," which was never submitted to this office for review.

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.

The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law to officials responsible for enforcing those laws. The privilege does not protect the contents of communications if they do not reveal the identity of the informant. *Roviaro*, 353 U.S. at 60. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978). Finally, when information does not describe conduct that violates the law, the informer's privilege does not apply. Open Records Decision Nos. 515 (1988), 191 (1978).

You have demonstrated to this office that the individuals whose identities you seek to protect were reporting potential violations of both state law and city ordinances carrying criminal penalties. Assuming that these individuals' identities have not been previously revealed to the officers or employees of the tire recycling company, this office agrees that the city may withhold pursuant to the informer's privilege the identifying information you have marked in "Exhibit 3."

You next seek to withhold pursuant to section 552.107(1) of the Government Code "Exhibit 4," a legal memorandum from the city attorney. Section 552.107(1) protects information coming within the attorney-client privilege. *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* After reviewing the memorandum at issue, we conclude that it consists solely of an attorney's legal opinion and as such may be withheld in its entirety pursuant to section 552.107(1).

Finally, you contend that the contents of "Exhibit 6" come under the protection of section 552.108, the "law enforcement" exception. Traditionally, when applying section 552.108, our office has distinguished between cases that are under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court of

civil appeals established the guidelines on what constitutes public information contained in police records pertaining to active criminal investigations. The court's holding was summarized in Open Records Decision No. 127 (1976), a review of which indicates that information typically found on the front page of offense reports, including a detailed description of the alleged offense, is public information. You have submitted to this office an affidavit attesting to the fact that the city police department's investigation of the allegations against the tire recycler is active. Accordingly, assuming that the city has released to the requestor all of the information to which he is entitled under *Houston Chronicle Publishing Co.*, the city may withhold the remainder of "Exhibit 6" at this time pursuant to section 552.108.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. 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/rho

Ref.: ID# 32711

Enclosures: Submitted documents

cc: Mr. Wayne Dolcefino
KTRK-TV - 13 Under Cover
P.O. Box 13
Houston, Texas 77001
(w/o enclosures)