



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 6, 1997

Mr. John A. Riley
Director, Litigation Support Division
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR97-0283

Dear Mr. Riley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103607.

The Texas Natural Resource Conservation Commission ("the TNRCC") received a request for information regarding a complaint of illegal dumping on property located on Pope Bend road in Bastrop County, Texas. You contend that the "TNRCC will disclose to [the requestor] all information concerning the complaints . . . that the TNRCC does not consider confidential." However, you claim that some of the requested information is excepted from disclosure under the informer's privilege, incorporated by section 552.101 of the Government Code. You have marked portions of the documents which the TNRCC claims are excepted from disclosure. We have considered the exception you claim and have reviewed the documents.

You claim that some of the requested information is excepted from disclosure under the informer's privilege. Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *Open Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties 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))*. The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5*.

We have reviewed the highlighted information which the TNRCC claims is excepted under the informer's privilege and conclude that it does identify an informer who reported a potential violation of a criminal or civil statute. Therefore, the TNRCC may withhold from disclosure the highlighted information for which it has asserted the informer's privilege. We assume for purposes of this ruling that the subject of the complaint does not know the informer's identity. See Open Records Decision Nos. 515 (1988), 208 (1978).

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 regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Sam Haddad". The signature is written in black ink and is positioned to the right of the typed name.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref: ID# 103607

Enclosures: Submitted documents

cc: Mr. William Petri, Jr.
407 Oakridge Drive
Austin, Texas 78746
(w/o enclosures)