



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 18, 1997

Ms. Tracy B. Calabrese  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR97-0365

Dear Ms. Calabrese:

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# 103906.

The City of Houston (the "city") received an open records request for information relating to an alleged deed restriction violation. You seek to withhold pursuant to the informer's privilege, in conjunction with section 552.101 of the Government Code, the portions of a document that would reveal the identity of the individual who reported the violation to city officials.<sup>1</sup>

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. [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.

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<sup>1</sup>Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

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).

In this instance you have demonstrated to this office that the individual whose identity you seek to protect was reporting a potential violation of a city ordinance carrying civil penalties. Assuming that the individual's identity has not been previously revealed to the requestor, this office agrees that the city may withhold pursuant to the informer's privilege the information you have marked in the document at issue.

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 questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Government Section

KEH/RWP/ch

Ref.: ID# 103906

Enclosures: Submitted documents

cc: Dr. Tran  
1731 Ansbury Drive  
Houston, Texas 77018  
(w/o enclosures)