



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 26, 1997

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

OR97-0628

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# 104505.

The Texas Natural Resource Conservation Commission (the "commission") received a request for copies of all reports made against Motorola during a specified time period. You have submitted representative samples of the requested records to this office for review.<sup>1</sup> You contend that the marked information in the records is excepted from disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege.

The informer's privilege, incorporated into the Open Records Act by section 552.101,<sup>2</sup> has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects the identities of persons who report violations of law to officials who have the duty of enforcing that particular law. *See Roviario v. United States*, 353 U.S. 53, 59 (1957). The privilege protects those 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

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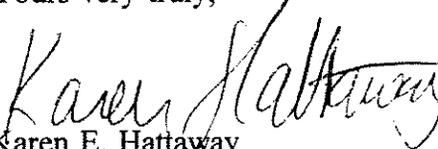
<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

(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. The privilege protects the content of the informant's communication only to the extent that it identifies the informant. *Roviaro*, 353 U.S. at 60. Having reviewed the submitted records, we conclude that the marked information is protected by the informer's privilege and is, therefore, excepted from disclosure pursuant to section 552.101 of the Government Code.

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,

  
Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 104505

Enclosures: Submitted documents

cc: Ms. Sharon Simmons Cantrell  
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(w/o enclosures)