



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 18, 1997

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

OR97-0870

Dear Mr. Riley:

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# 105972.

The Texas Natural Resource Conservation Commission ("TNRCC") received a request for information concerning complaints and reports made against a dairy, particularly a complaint that resulted in a site visit. You advise that TNRCC will release most of the information to the requestor. However, you assert that some of the requested information is excepted from disclosure under the informer's privilege as applied through section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the sample document you have submitted.<sup>1</sup>

The 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

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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.

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.

The TNRCC is one agency responsible for enforcing environmental statutes. To show that the "informer's privilege" is applicable, you have submitted to this office a copy of the document containing information identifying the informer. We agree with the redactions you have made, and conclude that you may withhold information that tends to identify the informer under section 552.101 of the Government Code. Therefore, the TNRCC may withhold from disclosure information that would tend to identify the informer. We are assuming for purposes of this ruling that the person complained of does not know the identity of the informer.

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,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/alg

Ref.: ID# 105972

Enclosures: Marked documents/submitted documents

cc: Doy Plocher  
RR 2, Box 2088  
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(w/o enclosures)