



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 11, 1998

Mr. Thomas R. Thompson
General Counsel
Texas Commission on Fire Protection
P.O. Box 22867
Austin, Texas 78768

OR98-0426

Dear Mr. Thompson:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112755.

The Texas Commission on Fire Protection (the "commission") received a request for an investigation report into alleged violations of the statutes and rules enforced by the commission. You assert that information identifying the complainant is excepted from disclosure under the informer's privilege aspect of section 552.101 of the Government Code, and have redacted this information on the responsive documents. It is our understanding that the remaining responsive information has been provided to the requestor.

Texas courts have long recognized the informer's privilege. *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). It is a well-established exception under the Open Records Act. Open Records Decision No. 549 (1990) at 4. For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 (1988) at 2-5, 391 (1983). 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:

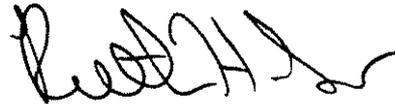
What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the 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.

Although the "informer's privilege" aspect of section 552.101 ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 285 (1981) at 1, 279 (1981) at 1-2; *see* Open Records Decision No. 208 (1978) at 1-2. This may include enforcement of quasi-criminal civil laws. *See* Open Records Decision Nos. 515 (1988) at 3, 391 (1983) at 3.

The complainant whose identity you seek to protect alleges violations of section 419.032 of the Government Code, concerning certification and training of fire protection personnel. Section 419.906 provides for administrative penalties of up to \$1,000 per violation. After review of your arguments and the documents at issue, we agree that the informer's privilege is applicable to except from disclosure the identifying information that you have marked.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 112755

Enclosures: Submitted documents

cc: Mr. Wayne Dial
City Manager
City of Clarksville
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Clarksville, Texas 75426
(w/o enclosures)