



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 19, 1998

Mr. Ron Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-1236

Dear Mr. Pigott:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114935.

The Texas Department of Public Safety (the "department") received a request for a variety of information concerning a drug case that resulted in a criminal conviction. The requestor also specifically seeks the name and age of the confidential informant in this case, which you assert is protected from disclosure under the informer's privilege aspect of section 552.101. You indicate that the only information at issue in this request is the name and age of the informant.

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), and 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:

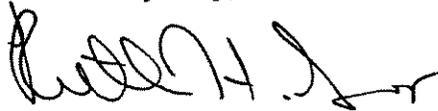
What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the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

The privilege protects information only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 (1990). Also, the exception is inapplicable if the identity of the informer is known to the subject of the communication. Open Records Decision No. 202 (1978) at 2. Assuming that the informant's identity was not revealed during the criminal case and resulting conviction, we agree that the department may withhold from disclosure information that would serve to identify the informant. Thus, the department may withhold both the name and age of the confidential informant.¹

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 114935

Enclosures: Submitted documents

cc: Ms. Jennifer Trissell
3824 Atlas Drive
Denton, Texas 76201
(w/o enclosures)

¹Because the informant's name and age are protected from disclosure under section 552.101, we need not address your section 552.108 argument.