



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 7, 1998

Mr. John R. Speed, P.E.
Executive Director
Texas Board of Professional Engineers
P.O. Drawer 18329
Austin, Texas 78760-8329

OR98-1586

Dear Mr. Speed:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116330.

The Texas Board of Professional Engineers (the "board") received a request for "the name, address, and telephone number" of the individual who contacted the board concerning a particular firm. You state that, based upon information provided by this individual, the board made inquiries as to whether the named firm was in violation of provisions of article 3271a of Vernon's Texas Civil Statutes, the Engineering Practice Act (the "Act"), by representing that the firm was qualified to engage in the practice of engineering without employing a licensed professional engineer. V.T.C.S. art. 3271a, §§ 1.1, 1.2, 1.8. You assert that identifying information about the individual who contacted the board is protected under the Act and also under the informer's privilege aspect of section 552.101 of the Government Code.

Section 22A(c) of article 3271a provides that the board "shall maintain the confidentiality" of complaints during the investigation of a complaint. Section 22A(c) also provides that the board may investigate complaints against both license holders and other persons who may have violated the Act. We note, however, that in correspondence to the requestor, you state that a complaint was never filed against the firm. Thus, section 22A(c) appears to be inapplicable in this situation.

We next address your argument that the individual's identity is protected from disclosure under the informer's privilege as incorporated into section 552.101 of the Government Code. The informer's privilege has 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), 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:

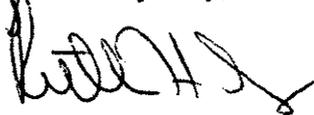
What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the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

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 also* 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 privilege excepts the informer's statement itself only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 (1990).

The information provided by this individual indicated that a violation of the Act may have occurred. Section 22 of the Act provides that the board may impose administrative penalties of up to \$3,000 per day against any person or entity for violating provisions of the Act. Section 23 provides that violations of the Act also can constitute Class A misdemeanor offenses. Under these circumstances, we agree that the informer's privilege is applicable and the board may withhold from disclosure the informer's name, address, and telephone number.

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

Ref: ID# 116330

Enclosures: Submitted documents

cc: Mr. Joseph Harris
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(w/o enclosures)