



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 10, 1998

Ms. Joan Kennerly
Assistant City Attorney
City of Irving
Office of the City Attorney
P.O. Box 152288
Irving, Texas 75015-2288

OR98-2140

Dear Ms. Kennerly:

You ask that we clarify Open Records Letter No. 98-1439 (1998). Your request for clarification was assigned ID# 117934.

Open Records Letter No. 98-1439 determined that the City of Irving (the "city") may withhold portions of the requested information based on section 552.103 of the Government Code and that sections 552.103 and 552.107(a) of the Government Code are inapplicable to other portions of the requested information. In regard to four documents which the ruling held not excepted from disclosure, you now ask whether the name of the complainant which appears on those documents is excepted from disclosure based on section 552.101 of the Government Code. You cite Open Records Decision No. 279 (1981) as authority for withholding from disclosure the identity of the complainant.

Open Records Decision No. 279 (1981) held that the identity of a person who reports a city zoning violation is excepted from disclosure by the predecessor provision of section 552.101 of the Government Code¹ as information deemed confidential by judicial decisions that recognize the existence of an informer's privilege. Section 552.101 of the Government Code incorporates the informer's privilege. Open Records Decision No. 515 (1988). The informer's privilege is 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. *Roviaro v. United States*, 353 U.S. 53, 59 (1957). Because the privilege exists to protect a governmental body's interest, it is waived by a governmental body that does not timely assert it. Open Records Decision No. 549 (1990).

¹The predecessor provision of section 552.101 of the Government Code is former section 3(a)(1) of Vernon's Revised Civil Statutes.

In this case, the city did not timely raise the informer's privilege to withhold from disclosure the complainant's identity. *See* Gov't Code § 552.301 (containing ten-day deadline for raising exceptions to public disclosure). Thus, the city must release the complainant's identity to the requestor. *Id.*

We are resolving this matter with this 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 may 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/mjc

Ref: ID# 117934

Enclosures: Submitted documents

cc: Mr. Mark Ovard
701 E. Shady Grove
Irving, Texas 75060
(w/o enclosures)