



February 18, 1999

Mr. Ryan Tredway
Staff Attorney
Legal & Compliance Division
MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR99-0495

Dear Mr. Tredway:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122190.

The Department of Insurance (the “department”) received a request for “a copy of all complaints against, inquiries about, and/or any other documentation” concerning a named individual and insurance company. You state that the department has released most of the information it has which is responsive to the request. However, you contend that one document is protected from disclosure under the informer’s privilege aspect of section 552.101.

Texas courts long have 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 at 4 (1990). 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 at 2-3 (1988), 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 at 2 (1982); Open Records Decision Nos. 285 at 1 (1981), 279 at 1-2 (1981); *see also* Open Records Decision No. 208 at 1-2 (1978). This may include enforcement of quasi-criminal civil laws. *See* Open Records Decision Nos. 515 at 3 (1988), 391 at 3 (1983). 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). However, the exception is inapplicable if the identity of the informer is known to the subject of the communication. Open Records Decision No. 202 at 2 (1978).

We have reviewed the document at issue and your argument against disclosure. We have marked the portions of the submitted document that may be withheld from disclosure under the informer’s privilege as protected by section 552.101 of the Government Code.

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.

Sincerely,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 122190

Enclosures: Submitted documents

cc: Mr. Brendan Hall
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P.O. Box 2725
Harlingen, Texas 76550
(w/o enclosures)