



March 29, 1999

Mr. John S. Schneider, Jr.
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501

OR99-0873

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124318.

The City of Pasadena (the "city") received a request for all records of city actions regarding vehicles and other private property belonging to a particular person. You indicate that you have provided the requestor fifty-two (52) pages of documents responsive to his request. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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). 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 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 at 5 (1990). However, once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 at 2 (1978). 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 2-5 (1988), 391 (1983). Finally, since the informer's privilege facet of section 552.101 of the Government Code serves to protect the flow of information to a governmental body and does not serve to protect a third person, this privilege, unlike other section 552.101 claims, may be waived by the governmental body. Open Records 549 (1990)

You have provided a copy of City of Pasadena Health Department Complaint 120-118 dated 1/5/99, with line 2 highlighted. We are of the opinion that this is a report of a violation of a City Ordinance and Civil Statute that is within the purview of the department's enforcement authority. You seem to indicate that to the best of your knowledge the informer's identity is unknown to the requestor. We conclude that the information you have marked may be withheld under the informer's privilege as incorporated 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,

David Van Brunt Price
David Van Brunt Price
Assistant Attorney General
Open Records Division

DVP\nc

Ref: ID# 124318

Enclosures: Submitted documents

cc: Mr. Michael Gleason
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501
(w/o enclosures)