



July 6, 1999

Mr. John Steiner
Division Chief
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR99-1868

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125915.

The City of Austin (the “city”) received an open records request for records pertaining to a particular complaint about a basketball goal in the city’s right of way. You state that most of the requested information has been released to the requestor. You seek to withhold, however, the identity of the individual who filed the complaint with the city pursuant to the informer’s privilege as incorporated into section 552.101 of the Government Code.

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. [Emphasis added.]

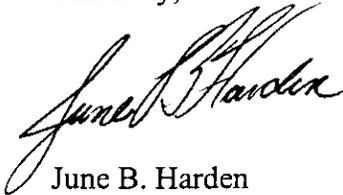
The “informer’s privilege” aspect of section 552.101 protects the identity of persons who report violations of the law. When information does not describe conduct that violates the law, the informer’s privilege does not apply. Open Records Decision Nos. 515 (1988), 191 (1978). Although the privilege 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); Open Records Decision Nos. 285 (1981), 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988), 391 (1983).

You state that, in this instance, the complainant had advised the city of an unauthorized obstruction in the city's right of way and that the city code provides for the order of the removal of an unauthorized obstruction or encroachment from public property. Assuming the city code also provides a criminal or quasi-criminal penalty for failure to remove such an obstruction or encroachment, we agree that the complainant's identity may be withheld from the requestor pursuant to the informer's privilege. We have marked the information the city may withhold accordingly.

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/eaf

Ref.: ID# 125915

Encl. Marked documents

cc: Mr. William S. Warren
Warren Law Firm
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Austin, Texas 78746
(w/o enclosures)