



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 23, 1993

Mr. Norbert J. Hart  
Assistant City Attorney  
City of Corpus Christi  
Legal Department  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR93-198

Dear Mr. Hart:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16565.

The City of Corpus Christi (the "city") has received a request for information about a city employee who allegedly violated certain rules and regulations of the city's civil service board. Specifically, the requestor, who represents the city employee at issue here, seeks "a copy of any written allegations, notes, memorandum and written or recorded statements from the complainant and any witnesses," the employee's personnel file, copies of specified civil service board rules and regulations, and copies of specified work sheets. You claim that the requested information is excepted from required public disclosure by sections 3(a)(1) and 3(a)(3) of the Open Records Act.

Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990).

You contend that section 3(a)(3) applies in this instance because the requested information relates to an action pending before the city's Civil Service Board. You do not explain, however, how this action constitutes litigation within the meaning of section 3(a)(3). We are not aware of any authority which supports your contention, and you have failed to bring any such authority to our attention. The Open Records Act places on the custodian of records the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). A claim that an exception applies with no explanation of why it applies will not suffice. Attorney General Opinion H-436 (1974). Consequently, we have no basis for concluding that the requested information may be withheld under section 3(a)(3) of the Open Records Act.

You also claim that information identifying or tending to identify the complainant is excepted from required public disclosure by section 3(a)(1), which excepts information made confidential by law, in conjunction with the informer's privilege. The informer's privilege has been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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.)

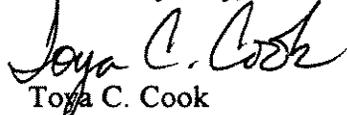
The informer's privilege aspect of section 3(a)(1) protects the identity of persons who report violations of the law. The content of an informer's communication may be withheld where it is necessary to protect the informer's identity. Open Records Decision No. 377 (1983). When information does not describe 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, 279 (1981); see also Open Records Decision No. 208 (1978).

It is alleged the city employee at issue here indicated on more than one occasion that he was to drive a city vehicle to one destination and thereafter drove it to another. We also understand that such conduct constitutes a violation of several civil service board rules and regulations. You do not indicate, however, whether violation of a civil service board rule or regulation constitutes a violation of law. If violation of a civil service board rule or regulation also constitutes a violation of a criminal law, you do not indicate

whether it is the duty of the civil service board to enforce that law. We thus have no basis to conclude that the informer's privilege applies in this instance. Accordingly, the requested information must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-198.

Yours very truly,



Toya C. Cook  
Assistant Attorney General  
Opinion Committee

TCC/GCK/le

Ref: ID# 16565

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