



Office of the Attorney General
State of Texas

February 28, 1994

DAN MORALES
ATTORNEY GENERAL

Ms. Sammie K. Glasco
Assistant General Counsel
Texas Department of Banking
2601 N. Lamar Boulevard
Austin, Texas 78705-4294

OR94-095

Dear Ms. Glasco:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 22472.

The Texas Department of Banking (the "department") has received an open records request for information from a third party informing the department that a particular establishment was selling prepaid funeral benefits which the department regulates. V.T.C.S. article 548b, § 9(e); see Attorney General Opinion MW-229 (1980). The information was released to the requestor; however, the department redacted the identity of the third party and other information tending to reveal his or her identity. The department claims the identity of the third party is confidential under the act. The department relies on section 552.101 of the act and the informer's privilege.

The informer's privilege has been recognized by Texas courts. *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 underlying rationale for 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

¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

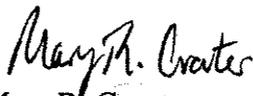
communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

The informer's privilege protects the identity of persons who report violations of the law. Open Records Decision No. 434 (1986). 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 at 1, 279 at 1-2 (1981); *see also* Open Records Decision No. 208 (1978) at 1-2. This may include enforcement of quasi-criminal civil laws. *See* Open Records Decision Nos. 515 (1988) at 3; 391 (1983) at 3.

We have examined the information you have submitted. The department is the agency charged with enforcing the prepaid funeral services and merchandise laws. V.T.C.S. article 548b, §9(e). In this instance, you have made the requisite showing to withhold the third party individual's identity and information tending to reveal his or her identity under the informer's privilege. We do not believe, however, that the informer's privilege protects the identity of any entity that is not a natural person. Therefore, the names of any corporations or business entities must be disclosed, unless they would tend to reveal the identity of an informer. We have marked the information that is confidential; the remaining information is not confidential and must be disclosed.

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 contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/rho

Ref.: ID# 22472

Enclosures: Submitted documents

cc: Mr. Russell D. Moore
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(w/o enclosures)