



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 22, 1994

Mr. Bill Campbell
Executive Director
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR94-574

Dear Mr. Campbell:

You ask whether the identity of an individual who filed a complaint regarding the O'Bryant Car Wash in San Marcos, Texas, is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27557. You seek to withhold the complainant's name under the informer's privilege.

The Texas Natural Resource Conservation Commission (the "commission") received an open records request for this information on June 22, 1994. You requested a decision from this office on July 6, 1994. Consequently, you failed to request a decision within the 10 days required by section 552.301(a) of the Government Code.

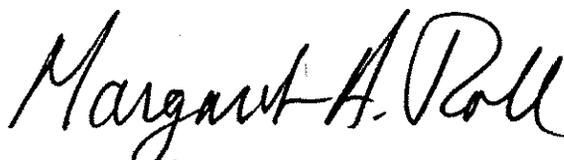
The Open Records Act requires a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request for information that the governmental body wishes to withhold. *See* Gov't Code § 552.301(a). When a governmental body fails to request a decision from the attorney general within 10 days of receiving a request for information, the information at issue is presumed to be public. *See id.* § 552.301(b); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ). To overcome this presumption, a governmental body must show a compelling interest to withhold the information. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. --Austin 1990, no writ); Open Records Decision No. 552 (1990) at 1.

A compelling interest may arise when a third-party's interests are at stake. Open Records Decision No. 552 at 1. However, the informer's privilege is designed to protect the government's interests, and thus, the existence of this privilege by itself does not demonstrate a compelling interest to withhold the information. Furthermore, you have

not provided any additional information that would constitute a compelling reason for withholding the complainant's identity in this particular instance. Therefore, because you have not presented this office with a compelling reason why the information should not be released, the commission must release the complainant's identity at this time.

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 this office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive style with a large, prominent "M" and "R".

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/RWP/rho

Ref: ID# 27557

cc: Mr. C.E. O'Bryant, Jr
112 Pinto Lane
San Marcos, Texas 78666