



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 22, 1994

Mr. G. Chadwick Weaver
Assistant City Attorney
The City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR94-579

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 27588.

The City of Midland (the "city") has received a request for the name of the individual who filed a complaint asserting that the requestor had parked a boat in the driveway of the requestor's home. You believe that the city may withhold the requested information pursuant to section 552.101 of the Government Code, which excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Specifically, you claim that the informer's privilege, incorporated into section 552.101, *see* Open Records Decision No. 549 (1990) at 4-5, authorizes the city to withhold the requested information.

In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale underlying 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. 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. [Citations omitted.]

Although the privilege ordinarily applies to the efforts of law-enforcement agencies, it may 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, 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. Open Records Decision Nos. 515 (1988) at 3; 391 (1983) at 3. The informer's privilege also applies to the identity of a person who reports a violation of a municipal ordinance if the violation constitutes a criminal offense. *See generally* Open Records Decision Nos. 355 (1982); 279 (1981). Significantly, however, the privilege protects the content of communications only to the extent that it identifies the informant. *Roviaro*, 353 U.S. at 60. Additionally, once an individual who would have cause to resent the communication knows who the informer is, the informer's privilege is inapplicable. *See* Open Records Decision No. 202 (1978) at 2 (quoting *Roviaro*, 353 U.S. at 60).

You have informed us that the complaint alleges a violation of title X of the Midland City Code, chapter 13, section 5(E). You advise that a violation of this section is punishable by a fine of up to \$500. Furthermore, you aver that the complainant reported the alleged violation to the city's Code Enforcement Division. Finally, we do not understand that the requestor knows the identity of the complainant.

We have reviewed the document you submitted for our review. *See* Gov't Code § 552.303. As we stated above, the informer's privilege protects information only to the extent that it identifies or tends to identify the informer. *See Roviaro*, 353 U.S. at 60. We do not believe that all of the information in the complaint identifies or tends to identify the complainant. However, once the city redacts the identifying information, the document no longer responds to the request. Accordingly, we conclude that the city may withhold the entire document.¹

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an 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,


Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

¹The informer's privilege, unlike other components of Government Code section 552.101, is discretionary. Open Records Decision No. 549 (1990) at 6. Thus, the city may choose to release the requested information with impunity.

KKO/MAR/rho

Ref.: ID# 27588

Enclosures: Submitted documents

cc: Mr. Doug Wilkerson
2102 Abbey Place
Midland, Texas 79707
(w/o enclosures)