



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 30, 1995

Mr. Guy E. Henry  
Staff Attorney  
Texas Natural Resource  
Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR95-019

Dear Mr. Henry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28440.

The Texas Natural Resource Conservation Commission (the "commission") received an open records request from the City of Nederland (the "city") for its records reflecting complaints that citizens have made to the commission regarding "the [sewage] bypass condition at 35th Street and Avenue C." You contend that because the requested documents contain the identities of the complainants the commission may withhold the records pursuant to the informer's privilege as incorporated into section 552.101 of the Government Code.

For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. See Open Records Decision Nos. 391 (1983); 191 (1978). 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.]

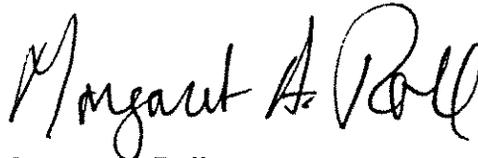
The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The "informer's privilege" aspect of section 552.101 protects the identity of a person who reports violations of the law. However, because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (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).

In this instance, it is apparent to this office that the complainants were reporting a potential violation of one or more laws governing ground and water pollution that the commission is responsible for enforcing. Accordingly, the commission may withhold pursuant to the informer's privilege all information tending to reveal the complainants' identities. We have marked the information in the records at issue that the commission may withhold; the remaining information in these documents must be released.

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/RWP/rho

Ref.: ID# 28440

Enclosures: Marked documents

cc: Mr. Bill Storey  
City Manager  
City of Nederland  
P.O. Box 967  
Nederland, Texas 77627  
(w/o enclosures)