



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 28, 1995

Ms. Patricia Hershey  
Staff Attorney  
Enforcement Coordination and Litigation Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR95-241

Dear Ms. Hershey:

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# 31180.

The Texas Natural Resource Conservation Commission (the "commission") received an open records request for copies of all records pertaining to complaints against the requestor's business for violations of the Texas Clean Air Act, Health and Safety Code chapter 382. You state that the commission has released to the requestor the requested records with certain information redacted. You contend that the redacted portions of the records may be withheld from the public pursuant to the "informer's privilege" as incorporated into section 552.101 of the Government Code.

Section 552.101 protects information coming within the "informer's privilege." 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.

The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law. 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 (1981), 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988); 391 (1983).

After reviewing the records at issue, we generally agree that the information you redacted identifies or tends to identify individuals who have reported a violation of the Clean Air Act to the commission. However, some of the information you seek to withhold does not tend to identify a particular informant, but rather merely reveals that a *commission investigator took samplings from the side of a particular mobile home*. The fact that samples were taken from the mobile home does not suggest that the resident in any way acted as a complainant; consequently, the location and description of the home must be released. The commission may withhold all the remaining information you have marked as coming under the protection of the informer's privilege.

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# 31180

Enclosures: Submitted documents

cc: Ms. Sherry L. Dunlop  
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Corpus Christi, Texas 78469  
(w/o enclosures)