



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 22, 1995

Ms. Lan P. Nguyen  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR95-792

Dear Ms. Nguyen:

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# 32713.

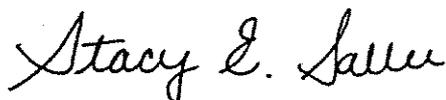
The City of Houston (the "city") received a request for "the name, address, telephone number, and the property interest in the Carverdale subdivision of the person or entity filing a complaint against the proposed construction of a church . . ." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103(a) of the Government Code. We have considered the exceptions you claimed and have reviewed the information at issue.

You assert that the requested information is excepted under section 552.101 as information protected by the "informer's privilege." The informer's privilege is actually a governmental entity's privilege to withhold from disclosure the identity of those persons who report violations of law. The privilege recognizes the duty of citizens to report violations of law and, by preserving their anonymity, encourages them to perform that duty. *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege protects the identity of a person who reports a violation or possible violation of law to officials charged with the duty of enforcing the particular law. See Open Records Decision Nos. 515 (1988), 191 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988) at 3, 391 (1983) at 3. This office has held that the informer's privilege also applies when the informer reports violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 515 (1988) at 2 (quoting Open Records Decision No. 279 (1981) at 2). The privilege may protect the informer's identity and any portion of his statement that may tend to reveal his identity. Open Records Decision No. 515 (1988) at 2.

Section 10-553(a) of Houston's Code of Ordinances, as amended by City of Houston Ordinance No. 94-1154, adopted October 26, 1994 (the "Houston Ordinances"), provides that the city attorney is authorized to file or become a party to a lawsuit to enforce a deed restriction. Section 10-552(a) of the Houston Ordinances provides that an owner who is in violation of a deed restriction "shall be subject to civil penalties of not more than \$1,000.00 per day . . ." We conclude that as the complainant reported a violation of the law, a city ordinance, to the city, an agency that is authorized to enforce that ordinance, information identifying the complainant is protected from disclosure under the informer's privilege that falls within section 552.101 of the Government Code. Therefore, we agree that the highlighted information may be withheld. We caution, however, that the city may not withhold a complainant's identity if the individual who would have cause to resent the communication knows the complainant's identity. See Open Records Decision No. 202 (1978) at 2 (quoting *Roviaro v. United States*, 353 U.S. 53, 60 (1957)).<sup>1</sup>

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,



Stacy E. Sallee  
Assistant Attorney General  
Open Government Section

SES/LRD/rho

Ref.: ID# 32713

Enclosures: Submitted documents

cc: Mr. Ronald J. Merriweather  
Attorney and Counselor at Law  
11819 Bourgeois Forest Road  
Houston, Texas 77066-3207  
(w/o enclosures)

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<sup>1</sup>The same result would occur under section 552.103(a) of the Government Code. If the opposing party in anticipated or pending litigation has seen or had access to the submitted information, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, as we have concluded that section 552.101 applies and the result under either section 552.101 or 552.103(a) would be the same, we need not address your section 552.103(a) claim.