



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 28, 1995

Ms. Gail Fenter  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR95-1017

Dear Ms. Fenter:

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# 35506.

The City of Midland (the "city") received a request for information relating to complaints made about Riley's Bar and Grill. You contend that some of the requested information is excepted from required public disclosure under section 552.101 of the Government Code as it incorporates the informer's privilege.

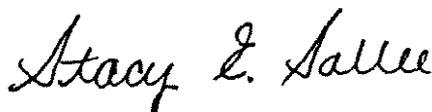
Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act, Open Records Decision No. 549 (1990) at 4. The informer's privilege protects the identity of persons who report violations of the law to officials having the duty of enforcing particular laws. The privilege thus encourages citizens to report the commission of crimes to law enforcement officials by keeping their identity anonymous. *Roviaro v. United States*, 353 U.S. 53, 59 (1957).

The informer's privilege does not apply to information that does not describe illegal conduct. Open Records Decision No. 515 (1988) at 5. The privilege excepts the informer's statement itself only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 (1990) at 5. However, once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 (1978) at 2.

You have submitted the requested information for our review. You contend that the name, address, telephone number, and any other identification of persons reporting alleged illegal conduct is excepted under the informer's privilege. We agree. However, you may not withhold the location of the offense on the complaints we have marked in Exhibit "C." See *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4 (listing factual information available to public). We have marked an additional two names contained in Exhibit "B" and one name contained in Exhibit "C" that may be withheld under the informer's privilege not marked by the city. One name in Exhibit "B" contains a complaint that does not involve illegal conduct. This name may not be withheld under the informer's privilege--we have marked this incident number for your convenience. The remaining information marked by the city in Exhibits "B" and "C" may be withheld under the informer's privilege.<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 Records Division

SES/LBC/ch

Ref: ID# 35506

Enclosures: Marked documents

cc: Mr. A.J. Pope  
Attorney  
1207 W. Wall  
Midland, Texas 79701  
(w/o enclosures)

---

<sup>1</sup>We note that some of the complaints contained in Exhibit "C" do not appear responsive to the