



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 10, 1995

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

OR95-1065

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# 36113.

The City of Midland (the "city") received a request for information regarding a complaint made to the city health department regarding a residential building. You contend that the name, address, and any other identifying information contained in the complaint is excepted from required public disclosure under the informer's privilege as incorporated by section 552.101 of the Government Code. The city has submitted the information in question and marked the portions of the record you contend are excepted from disclosure.

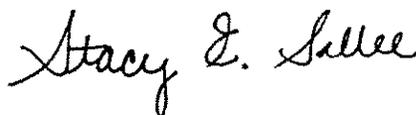
Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act, Open Records Decision No. 549 (1990) at 4. 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. 515 (1988) at 2-5, 391 (1983). Although the "informer's privilege" aspect of section 552.101 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) at 2; Open Records Decision Nos. 285 (1981) at 1, 279 (1981) at 1-2; *see also* Open Records Decision No. 208 (1978) at 1-2. This may include enforcement of quasi-criminal civil laws. *See* Open

Records Decision Nos. 515 (1988) at 3, 391 (1983) at 3. 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. Once the identity of the informer is known to the subject of the communication, the exception is no longer applicable.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 state that the complainant reported "sewer smells" to the Midland Health Department. You explain that the department is responsible for enforcing city code provisions relating to property maintained in an unsanitary condition. In this instance, you have demonstrated that the complainant was reporting potential violations of one or more city health ordinances that the city is responsible for enforcing. Accordingly, the city may withhold the marked information pursuant to 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,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/LBC/rho

Ref: ID# 36113

Enclosures: Marked documents

cc: Jim & Dana Nyerges  
P.O. Box 60064  
Midland, Texas 79711  
(w/o enclosures)