



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1995

Mr. Rick Perry
Commissioner
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR95-1136

Dear Commissioner Perry:

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# 36196.

The Texas Department of Agriculture (the "department") received a request for information concerning a complaint regarding Exotic Palms Wholesalers. You contend that some of the requested information is excepted from required public disclosure under the informer's privilege aspect of section 552.101 of the Government Code.

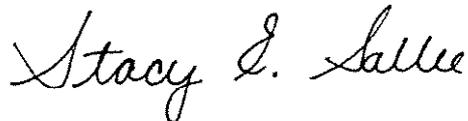
Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act, Open Records Decision No. 549 (1990) at 4. 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 However, once the identity of the informer is known to the subject of the communication, the exception is no longer applicable.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 state that the complainant alleged that the company was operating a nursery/floral establishment without a nursery/floral license. You inform us that operating without such a license is a violation of nursery/floral statutes and regulations. You further state that the department is charged with enforcing such statutes and regulations. Accordingly, you may withhold the information you have marked on the submitted document from required public disclosure. The remaining information 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,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/LBC/rho

Ref: ID# 36196

Enclosure: Marked document

cc: Mr. John R. Jensen
Exotic Palms Wholesalers
P.O. Box 1809
Port Aransas, Texas 78373-1809
(w/o enclosure)