



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 31, 1996

Mr. Jerry Bruce Cain
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR96-2001

Dear Mr. Cain:

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# 101806.

The City of Laredo (the "city") received an open records request for, among other things, the following information:

Complete copy of citizen complaint logs for engineer(s), sanitarians and inspectors of the Laredo Health Department's Environment Health and Pollution Control Division for the past five (5) years to include actions taken, referrals, and citations issued and their disposition.

You state that because of the voluminous nature of the request, you have submitted to this office for review a representative sample of the records at issue. You contend that the name, address, and other forms of identity of the complainants come under the protection of the informer's privilege.

Section 552.101 of the Government Code protects the "informer's privilege." The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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. [Emphasis added.]

The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law. When information does not describe conduct that violates the law, the informer's privilege does not apply. Open Records Decision Nos. 515 (1988); 191 (1978). 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, 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).¹ The privilege does not, however, protect the contents of communications if they do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. at 60. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978).

All of the records you have submitted to this office appear to involve citizens' reports of what they believed to be violations of the law to authorities who would be responsible for enforcing those laws. Further, none of the records suggest that the subjects of the complaints were made aware of the identities of their accusers. We therefore conclude that the city may withhold pursuant to the informer's privilege all information that would tend to identify the complainants.² All of the remaining information, however, 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref.: ID# 101806

¹The privilege does not ordinarily apply to employees "reporting" to their employers about the job performance of other employees. *See* Open Records Decision No. 515 (1988).

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Enclosures: Submitted documents

cc: Mr. Hector Farias
Texas Mexican Border International Trade Association
P.O. Box 243
Laredo, Texas 78042
(w/o enclosures)