



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 27, 1996

Mr. Scott M. Kidwell  
Assistant City Attorney  
Post Office Box 1152  
Midland, Texas 79702-1152

OR96-2273

Dear Mr. Kidwell:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102130.

The City of Midland (the "city") received a request for information concerning an alleged sexual assault. You have marked the information that identifies the complainant, and seek to withhold that information pursuant to the common-law privacy provisions encompassed in section 552.101 of the Government Code. You also have marked other information under the informer's privilege aspect of section 552.101.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision. The test for whether information should be withheld from disclosure under common-law privacy as incorporated in section 552.101 is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977). We agree that information identifying the victim of the alleged sexual assault is protected from disclosure under section 552.101. Open Records Decision No. 339 (1982) at 2.

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). *See also Roviario v. United States*, 353 U.S. 53 (1957). We agree that you may withhold from disclosure the information that you marked as identifying informants in this instance.

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/ch

Ref.: ID# 102130

Enclosures: Submitted document

cc: Mr. James D. Nations  
8117 Preston Road  
Suite 520  
Dallas, Texas 75225-6325  
(w/o enclosures)