



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 20, 1998

Mr. John A. Riley
Director
Litigation Support Division
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR98-0180

Dear Mr. Riley:

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# 112570.

The Texas Natural Resource Conservation Commission (the "commission") received a request for information regarding the Williamson County Roads and Bridges Department concerning oil spills and the dumping of emulsions and trash. You state that the commission has made available to the requestor some of the requested information. You claim, however, that portions of the remaining requested information are protected from disclosure by section 552.101 of the Government Code under the informer's privilege. You seek to withhold any information which identifies a person who made a complaint to the commission about violations or potential violations of the law. You have highlighted the information you wish to withhold on the complaint printouts. We have considered the exception you claim and have reviewed the sample documents that you have submitted.¹

Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not

¹In 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 Nos. 499 (1988), 497 (1988). 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.

already know the informer's identity. Open Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5.

In this instance, you have shown that the persons named in the complaints have reported possible violations of state law or state disposal regulations over which the commission has enforcement duties. The complaints concern possible violations of chapter 26 of the Water Code. After examining your arguments and the submitted documents, we conclude that the commission may withhold the identifying, highlighted information under 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 112570

Enclosures: Submitted documents

cc: Mr. Boyd Henry
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(w/o enclosures)