



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 3, 1998

Mr. Lou Bright  
General Counsel  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

OR98-0576

Dear Mr. Bright:

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# 113190.

The Texas Alcoholic Beverage Commission (the "commission") received an open records request for "a copy of a complaint lodged against [the requestor's] Mixed Beverage Permit, MB 221484." In response to the request, you submitted to this office for review a copy of the information which you assert is responsive. You state certain information has been released to the requestor, however, you have redacted "the name of the person who filed the complaint against [the requestor]." You seek to withhold the redacted information, which you have marked on your submissions to this office, based on section 552.101 as it incorporates the informer's privilege. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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). 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.

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. 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. We have reviewed the information submitted for our consideration. We agree that the information you have marked may be withheld under the informer's privilege as incorporated by section 552.101 of the Government Code.

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,

A handwritten signature in cursive script that reads "Sam Haddad". The signature is written in dark ink and is positioned to the right of the typed name.

Sam Haddad  
Assistant Attorney General  
Open Government Section

SH/rho

Ref.: ID# 113190

Enclosures: Marked documents

cc: Mr. W. W. Sanderfer, Jr.  
Woody Sanderfer Agency  
401 N. Tanchua  
Corpus Christi, Texas 78401  
(w/o enclosures)