



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 3, 1998

Mr. Paul Sarahan
Acting Director
Litigation Support Division
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR98-1574

Dear Mr. Sarahan:

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# 116341.

The Texas Natural Resource Conservation Commission (the "commission") received a request for "a copy of the complaint filed against Love's Store, Center Point Texas concerning the Store's septic tank and the subsequent inspection report." In response to the request, you submitted to this office for review a representative sample of the information which you assert is responsive. You indicate that the commission is making available to the requestor portions of the requested information. However, you have submitted certain information and ask whether it is confidential under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted document.

You assert that the complainant's identifying information is excepted from public disclosure by the informer's privilege under section 552.101. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The 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 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. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 (1990) at 5. We conclude that you may withhold the complainant's identifying information, which we have marked, under section 552.101 in conjunction with 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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/nc

Ref.: ID# 116341

Enclosures: Submitted documents

cc: Mr. James A. Love, Jr.
Love's Store
302 N. San Antonio Street
Center Point, Texas 78010
(w/o enclosures)