

January 21, 1999



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

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

OR99-0171

Dear Mr. Sarahan:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121390.

The Texas Natural Resource Conservation Commission (the "TNRCC") received a request for information concerning a particular site. The requestor states that he is particularly interested in knowing the identity of the person who filed the original complaint. You indicate that all of the responsive information has been provided to the requestor except for the identity of the complainant. You assert that the complainant's identity is protected from disclosure under the informer's privilege aspect of section 552.101.

Texas courts 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 chapter 552. Open Records Decision No. 549 (1990) at 4. 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

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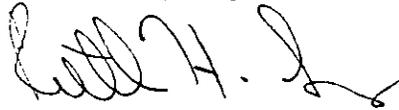
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protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

However, the complainant in this situation is a public employee whose job duties apparently include making this type of report. Because the complainant is not a citizen who has furnished information to public officials charged with enforcement of the law but rather is a public official charged with enforcing the law, the *Roviaro* rationale is inapplicable here. You may not withhold the identity of this complainant.<sup>1</sup>

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# 121390

Enclosures: Submitted documents

cc: Mr. Reynaldo Ramirez, Jr.  
Law Office of Reynaldo Ramirez, Jr.  
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Houston, Texas 77038  
(w/o enclosures)

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<sup>1</sup>We note that the requestor's October 12, 1998 letter indicates that this is his second request for information. You do not indicate that TNRCC received a prior written request for this information. We need not address the timeliness of this request in this situation, though, as the information is public in any event.