



March 8, 1999

Mr. Jack W. Naranjo  
Assistant City Attorney  
City of Arlington  
P.O. Box 231  
Arlington, Texas 76004-0231

OR99-0640

Dear Mr. Naranjo:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 122657.

The City of Arlington Health Department (the "department") received a request for "a copy of all complaints filed against the Office of Christian Jenkins," regarding smoking violations "from January 1, 1997 to present." In response to the request, you submit to this office for review a copy of the records which you assert are responsive. You state that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with 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 at 4 (1990). 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 at 2-5 (1988), 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 at 1 (1981), 279 at 1-2 (1981); *see also* Open Records Decision No. 208 at 1-2 (1978). The privilege excepts the informer's statement itself only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 at 5 (1990). 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 at 2 (1978). We have reviewed the information submitted for our consideration and the submitted Health and Sanitation ordinance, Exhibit C, concerning smoking in the workplace. We agree that the information you have marked, in Exhibit B, 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.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with a large initial "S" and "H".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 122657

cc: Mr. Timothy Whitley  
Law Offices of Christian Jenkins, P.C.  
1307 B West Abram, Suite 100  
Arlington, Texas 76103  
(w/o enclosures)