



April 9, 1999

Ms. Susan K. Steeg
General Counsel
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR99-0970

Dear Ms. Steeg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123355.

The Department of Health received a request from an employee of the department for information relating to himself for the period July 20, 1998, to December 16, 1998. You seek to withhold portions of the responsive information under section 552.101 of the Government Code.

Section 552.101 excepts from disclosure information which is made confidential by statutory or constitutional law or by judicial decision, including common-law privacy. In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The information at issue here relates to sexual harassment complaints against the requestor. Pursuant to the *Ellen* decision, you must withhold the identities of victims and witnesses from the information at issue.

You also claim that portions of the requested information are protected by the informer's privilege. Section 552.101 also incorporates the "informer's privilege." The informer's privilege has been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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

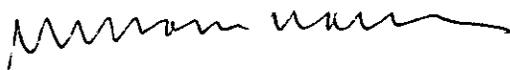
persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The “informer’s privilege” aspect of section 552.101 protects the identity of persons who report violations of the law. When information does not describe conduct that violates the law, the informer’s privilege does not apply. Open Records Decision Nos. 515 (1988); 191 (1978). Although the privilege 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); Open Records Decision Nos. 285, 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988); 391 (1983). However, the privilege does not apply ordinarily to employees “reporting” to their employers about the job performance of other employees. *See* Open Records Decision No. 515.

It would appear that the individuals, with respect to whose identities you claim the informer’s privilege, are employees of the department whose duties would include communicating information about the sexual harassment allegations here. Therefore, in our opinion, their identities are not protected by the informer’s privilege. Except as noted above, you must release the information at issue.

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,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 123355

encl. Submitted documents

cc: Mr. Al Giles
P.O. Box 50360
Austin, Texas 78763-0360
(w/o enclosures)