



April 13, 1999

Mr. Bernardo Garcia  
Assistant County Attorney  
Harris County  
1015 Congress Avenue, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR99-1000

Dear Mr. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124384.

The Harris County Rabies/Animal Control Office (the "HCRAC Office"), whom you represent, received a request for "the names of the individuals you have leased cat traps to from January 1, 1999 to the present date, as well as the names of the individuals that are currently leasing cat traps to." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. 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 Public Information Act. Open Records Decision No. 549 at 4 (1990). 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). This may include enforcement of quasi-criminal civil laws. *See* Open Records Decision Nos. 515 at 3 (1988), 391 at 3 (1983). 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). 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). Finally, since the informer's privilege facet of section 552.101 of the Government Code serves to protect the flow of information to a governmental body and does not serve to protect a third person, this privilege, unlike other section 552.101 claims, may be waived by the governmental body. Open Records Decision No. 549 (1990).

You have provided a copy of a Live Trap Agreement, with lines 1,2,3, and the last line highlighted. We are of the opinion that this is a report of a violation of a statute that is within the purview of the HCRAC Office's enforcement authority. One who requests a trap to capture stray animals is reporting a stray animal and should be treated as an informant. You have stated that to the best of your knowledge the informer's identity is unknown to the requestor. We conclude 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.

Sincerely,

*David Van Brunt Price*

David Van Brunt Price  
Assistant Attorney General  
Open Records Division

DVP\nc

Ref: ID# 124384

Encl: Submitted documents

cc: Mr. Chris Parrett  
2000 Bay Area Boulevard, Apartment 415  
Houston, Texas 77058  
(w/o enclosures)