



October 8, 1999

Ms. Joanne Wright
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR99-2876

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128820.

The Texas Department of Transportation (the "department") received a request for a brief description of the complaint against All Trac Transportation, Inc. ("All Trac") and the complainant's identity. You state that the record of the complaint will be released to the requestor, but you seek to withhold the complainant's identity from disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege. We have considered the exception you claim and reviewed the information at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the informer's privilege. The informer's privilege has long been recognized by Texas courts. *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). 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 at 3 (1988), 208 at 1-2 (1978). 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 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)).

You explain that "[c]hapter 643 of the Transportation Code gives TxDOT the authority to regulate motor carriers, to adopt rules to protect consumers, and to impose administrative

penalties against motor carriers that violate those rules.” All Trac, against whom the complainant makes allegations, is a motor carrier licensed by the department. Under these circumstances, we agree that the complainant’s identity is protected by the informer’s privilege. In order to protect the complainant’s identity, the department may redact the highlighted information from the submitted document pursuant to 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/KEH/nc

Ref: ID# 128820

Encl. Submitted documents

cc: Mr. Richard G. Frakes
All Trac Transportation, Inc.
975 S. Highway 67
Midlothian, Texas 76065
(w/o enclosures)