Mr. Kevin McCalla  
Acting Director, Legal Services Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

Dear Mr. McCalla:

You asked whether information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28770.

The Texas Natural Resource Conservation Commission (the "commission") received an open records request for certain information including the identity of a person who reported a violation of a "dumping" ordinance. You contend that the name of the complainant is protected under the "informer’s privilege" aspect of section 552.101 of the Government Code. Accordingly, you argue that the information which the requestor seeks is exempted from mandatory disclosure.

On the basis of Open Records Decision No. 515 (1988) and Roviaro v. United States, 353 U.S. 53 (1957), this office has held the informer’s privilege applicable to communications made to law enforcement officials regarding the alleged commission of a crime. In Open Records Decision No. 279 (1981), this office concluded that the identity of a person who reports a zoning violation is excepted from disclosure under the statutory predecessor to section 552.101, as information deemed confidential by the informer’s privilege. This privilege also applies when the informer reports 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 Nos. 515 (1988), 279 (1981).

In Westinghouse Electric Corporation v. City of Burlington, 351 F.2d 762, 768 (D.C. Cir. 1965), the court discussed the rationale for the privilege:
The purpose of the privilege is not to protect the particular informer from retaliation, but to protect the flow of information to the government. It rests on the assumption that a citizen, recognizing the risks of retaliation, will be more likely to inform if he knows that the identity will be kept secret. The privilege is maintained to encourage possible informers in the future by giving them some assurance of anonymity.\footnote{Thus, the informer's privilege is waivable by the governmental body, since the privilege "belongs" to the government, and section 552.305 is not applicable.}

To show that the "informer's privilege" is applicable, you have submitted to this office a copy of the document containing the informer's name. We conclude that you may withhold information that tends to identify the informer under 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.

Yours very truly,

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/SAB/ch

Ref.: ID# 28770

Enclosures: Submitted documents

cc: Mr. Billy W. Boone
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    (w/o enclosures)