

Police received a tip from an informant that a man that lived on his street might be dealing drugs out of his home. An investigation was initiated in response to the informant's tip. During the investigation, an undercover officer purchased cocaine from the man at his home on multiple occasions. Police ultimately obtained a valid warrant to search the man's home and, while executing the warrant, found a large quantity of cocaine. The man was subsequently charged with knowingly possessing cocaine with the intent to distribute.

Prior to trial, the man requested disclosure of the identity of the informant and the contents of the informant's statement to police. The prosecutor refused to disclose the informant's identity and the substance of the informant's statement to police, claiming that both are privileged.

How should the court rule on the prosecutor's privilege claims?

- A. Both the identity of the informant and the contents of the informant's statement to police are privileged.
- B. Only the contents of the informant's statement to police are privileged.
- C. Only the identity of the informant is privileged.
- D. Neither the identity of the informant nor the contents of the informant's statement to police are privileged.

Explanation:

The **government-informant privilege** protects the **government** from being **compelled** to **disclose** the **identity of informants**—ie, persons who supply information to law enforcement about an alleged crime. This furthers a public interest in encouraging citizens to share information about criminal activity by protecting the citizens' anonymity. However, the government-informant privilege is not absolute. The **privilege does not apply** if:

the informant's identity is already known to those with cause to resent the communication to law enforcement, (not seen here) *or*

the defendant shows that the informant's **identity is material** to the establishment of a **defense** or otherwise necessary and essential to a **fair determination** of the case.

Here, the man has not demonstrated—nor is there an argument to be made—that the informant's identity is material to the establishment of his defense or otherwise necessary to a fair determination of the case. That is because the informant merely provided a tip that police later verified through a thorough investigation. Therefore, the informant's identity is privileged (**Choices B & D**).

However, the privilege does not protect the *contents* of an informant's communication so long as the communication does not reveal the informant's identity. Therefore, the man is entitled to disclosure of the informant's statement—ie, that the man might be dealing drugs out of his home—because it does not reveal the informant's identity (**Choice A**).

Educational objective:

The government-informant privilege generally allows the government to withhold the identity of a confidential informant. However, the privilege does not preclude disclosure of the content of a communication provided by an informant if its disclosure will not reveal the informant's identity.

References

Roviaro v. United States, 353 U.S. 53, 61–62 (1957) (identity of informant must be disclosed when the informant's testimony is relevant and helpful to defense).

Government-informant privilege

