



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2009

Ms. Kathleen C. Decker
Litigation Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2009-11114

Dear Ms. Decker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 351512 (PIR Nos. 09.05.21.08 and 09.06.09.09.)

The Texas Commission on Environmental Quality (the "commission") received two requests from the same requestor for a specified environmental risk assessment and information regarding complaints against poultry production facilities located in six named counties. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that you have only submitted a representative sample of the information pertaining to the requested complaints. We assume that, to the extent the requested environmental risk assessment existed when the commission received the request, you have released it to the requestor. If not, then you must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body*

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The common-law informer's privilege, which is incorporated into the Act under section 552.101, has long been recognized by Texas courts. *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). The informer's privilege 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 (1998), 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)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). However, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro v. United States*, 353 U.S. 53, 60 (1957).

You state the submitted information is related to complaints of alleged violations of section 101.4 of title 30 of the Texas Administrative Code and Chapter 382 of the Texas Health and Safety Code, also known as the Texas Clean Air Act. You explain that the commission has authority to enforce these environmental laws under Texas Water Code sections 5.103 and 7.102. You further state that there are administrative and civil penalties for a violation of those code sections. See Water Code §§ 7.051, .102. Based on your representations and our review of the submitted information, we conclude that the commission may withhold the complainants' identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the informer's privilege. However, the remaining information does not reveal the identity of an informer, and thus, may not be withheld pursuant to this exception.

Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. See *id.* § 552.137(c). Upon review, we agree the commission must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owner of an e-mail address has affirmatively consented to its public disclosure.

In summary, the commission may withhold the complainants' identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the informer's privilege. The commission must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owner of an e-mail address has affirmatively consented to its public disclosure. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 351512

Enc. Submitted documents

cc: Requestor
(w/o enclosures)