



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2010

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

OR2010-01726

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# 369360 (TCEQ PIR No. 09.11.10.08).

The Texas Commission on Environmental Quality (the "commission") received a request for the identity and contact information of the complainant who filed a complaint against Beechwood Water Supply Corporation on a specified date. You claim portions of the submitted information are 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 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. This section encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects 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. *See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The 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

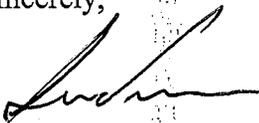
criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." See Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. See Open Records Decision No. 549 at 5 (1990).

You seek to withhold the identifying information of a complainant; however, you have not identified any alleged violation, nor have you explained whether an alleged violation carries civil or criminal penalties. Accordingly, the commission has failed to demonstrate the informer's privilege is applicable to the information at issue. Thus, we conclude the commission may not withhold the information at issue under section 552.101 of the Government Code in conjunction with the informer's privilege. As no further exceptions are raised, the submitted information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 369360

Enc. Submitted documents

c: Requestor
(w/o enclosures)