



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2010

Mr. Brandon S. Shelby
City Attorney
City of Sherman
P.O. Box 1106
Sherman, Texas 75091-1106

OR2010-08447

Dear Mr. Shelby:

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# 381846.

The City of Sherman (the "city") received a request for the inspection records of certain holding tanks. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You raise section 552.101 of the Government Code in conjunction with section 13.07.566 of the city's Code of Ordinances. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 13.07.566 states, in part, "any information submitted to the city pursuant to [division 5 of article 13.07] may be claimed as confidential by the industrial user[.]" SHERMAN, TEX., CODE § 13.07.566(a). The Texas Supreme Court has found that, absent a specific grant of authority from the state legislature, a governmental agency may not promulgate a rule designating information confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976) (addressing statutory predecessor to Act). Thus, a city ordinance cannot operate to make confidential information that is subject to chapter 552 of the Government Code without a grant of authority from the legislature. *See Open Records Decision No. 594 at 3 (1991) (citing City of Brookside Village v. Comeau, 633 S.W.2d 790 (Tex. 1982))*. You do not direct us to, nor are we aware of, any specific provision of state or federal law that allows the city to promulgate a rule designating the information at issue confidential under the Act. Consequently, we conclude the city may not withhold the submitted information under section 552.101 on the basis of this ordinance.

You also claim the submitted information is confidential under section 552.101 in conjunction with section 403.14 of title 40 of the Code of Federal Regulations. Section 403.14(a) of title 40 of the Code of Federal Regulations states:

(a) [Environmental Protection Agency (“EPA”)] authorities. In accordance with 40 CFR part 2, any information submitted to EPA pursuant to [part 403 of title 40] may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submissions, by stamping the words “confidential business information” on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2[.]

40 C.F.R. § 403.14(a). We note section 403.14 applies to information in the possession of the EPA. However, the information at issue was created by and is in the possession of the city. Thus, we find you have failed to demonstrate the applicability of section 403.14(a) to the submitted information. Because you have failed to establish the applicability of section 403.14 of title 40 of the Code of Federal Regulations, we do not address the applicability of part 2 of title 40 of the Code of Federal Regulations to the submitted information. As no further exception to the disclosure of the submitted information has been raised, it 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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/sdk

Ref: ID# 381846

Enc. Submitted documents

c: Requestor
(w/o enclosures)