



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2011

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

OR2011-06083

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# 416377 (PIR No. 11.02.10.02).

The Texas Commission on Environmental Quality (the "commission") received a request for the complete file regarding a named individual including claims about controlled burns; all notices of violations regarding controlled burns for a specified time period; the operating budget of the commission's Beaumont office for the previous year; and any notice from the state regarding cutbacks in operating funds and personnel for the next budget period. You state you have released some information to the requestor. 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 representative sample of information.¹

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

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. Section 552.101 encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See 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 the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 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 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNoughton 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.

You claim portions of the submitted information, which you have marked, contain identifying information of persons who reported possible violations of the Texas Clean Air Act, Health & Safety Code ch. 382, and section 101.4 of chapter 30 of the Texas Administrative Code to the commission. *See generally* Health & Safety Code ch. 382, 30 Tex. Admin. Code § 101.4. You explain the commission is charged with investigating potential violations of environmental laws in Texas, which include air pollution constituting a nuisance violation. *See* Health & Safety Code § 382.002; Water Code §§ 5.013, 7.002. You further state violations of the laws at issue are punishable by administrative and civil penalties. *See* Water Code §§ 7.052, 7.102. Based on your representations and our review, we conclude the commission has demonstrated the applicability of the common-law informer's privilege to the information you have marked. Therefore, the commission may withhold this information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The commission must release the remaining information.

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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison", written in a cursive style.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 416377

Enc. Submitted documents

c: Requestor
(w/o enclosures)