



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2011

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

OR2011-09359

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#422512 (TCEQ PIR No. 11.04.11.14).

The Texas Commission on Environmental Quality (the "commission") received a request for forty five categories of information relating to *Michael and Susan Knoll v. XTO Energy, Inc., et al.*, cause no. 2010-10345-16, including all records and information relating to communications between two named individuals that presently reside at a specified address and any employee, agent or representative of the commission.¹ You state you have released some responsive information to the requestor. You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹You state, and provide documentation showing, the commission sought and received clarification from the requestor regarding the request. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²We note that although you did not timely raise section 552.137 of the Government Code, this provision constitutes a compelling reason to withhold information, and we will consider your argument under this exception. See Gov't Code § 552.301, .302.

³This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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. You raise section 552.101 in conjunction with 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 from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority. *See* Open Records Decision Nos. 515 at 3 (1988). 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). 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). However, the privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 at 1-2 (1978).

You claim portions of the submitted information, which you have highlighted, contain identifying information of persons who reported possible violations of section 101.4 of chapter 30 of the Texas Administrative Code. *See generally* 30 Tex. Admin. Code § 101.4. You explain the commission is charged with investigating potential violations of environmental laws in Texas, which include water quality and nuisance odors. *See* Water Code §§ 5.013, 7.002. You also state violations of the law at issue are punishable by administrative and civil penalties. *See* Water Code §§ 7.052, 7.102. Having reviewed the submitted information, we conclude the commission may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. We note that because a post office box number does not tend to disclose a person's identity, the commission may not withhold the post office box number under section 552.101 of the Government Code. Furthermore, the submitted documents reflect that the remaining information you have marked pertains to an individual who is already known by the subject of the complaints or does not identify or tend to identify a complainant. Therefore, no portion of the remaining information may be withheld under section 552.101 in conjunction with the informer's privilege.

The remaining information contains personal e-mail addresses. Section 552.137 of the Government Code requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See* Gov't Code § 552.137(b). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). *See id.* § 552.137(c). Further, you do not inform us that the owners of the e-mail addresses

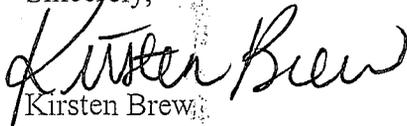
affirmatively consented to their release. Therefore, the commission must withhold the e-mail addresses that we have marked under section 552.137 of the Government Code.⁴

In summary, the commission may withhold the information that we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The commission must withhold the e-mail addresses we have marked under section 552.137 of the Government Code. The remaining 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,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 422512

Enc. Submitted documents

c: Requestor
(w/o enclosure)

⁴We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.