



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2011

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

OR2011-10906

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# 425378 (PIR# 11.05.11.01).

The Texas Commission on Environmental Quality (the "commission") received a request for information related to a specified complaint. You state you have released some responsive information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions 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. 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 a person who reported possible violations of sections 111.201 and 330.15 of title 30 of the Texas Administrative Code. *See generally* 30 Tex. Admin. Code §§ 111.201, 330.15. You explain the commission is charged with investigating potential violations of environmental laws in Texas, which include air quality and solid waste disposal. *See* Health & Safety Code §§ 361.002, 382.002. 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 you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 425378

Enc. Submitted documents

c: Requestor
(w/o enclosures)