



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2011

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

OR2011-13745

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# 432818 (ORR# 11.07.26.17).

The Texas Commission on Environmental Quality (the "commission") received a request for information pertaining to J-Mac Tool. You state the commission has made some of the requested information available to the requestor, but 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 representative sample of information.<sup>1</sup>

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *E.g., 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. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of

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<sup>1</sup>We 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.

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 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. 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 (1988). The privilege excepts the informer’s statement only to the extent necessary to protect that informer’s identity. Open Records Decision No. 549 at 5 (1990).

You inform us the requested information identifies individuals who reported possible violations of chapter 382 of the Health and Safety Code, chapter 26 of the Water Code, and section 101.4 of title 30 of the Texas Administrative Code. You state the complainants reported the alleged violations to the commission directly or the United States Environmental Protection Agency, which forwarded the complaints to the commission. You explain the commission has the authority to enforce these environmental laws under sections 5.013, 7.002, and 26.127 of the Water Code and chapter 382 of the Health and Safety Code. You further state violations of these environmental laws may result in administrative penalties under section 7.052 of the Water Code and civil penalties under section 7.102 of the Water Code. Based on your representations and our review of the submitted information, we conclude the commission may withhold the complainants’ identifying information, which you have marked, under section 552.101 of the Government Code in conjunction with the informer’s privilege. The commission must release the remaining information to the requestor.

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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 432818

Enc. Submitted documents

c: Requestor  
(w/o enclosures)