



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 21, 2012

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

OR2012-04150

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# 449737 (TCEQ PIR No. 12.01.13.10).

The Texas Commission on Environmental Quality (the "commission") received a request for information relating to a complaint regarding the requestor. You claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code and privileged under Texas Rule of Evidence 508. We have considered your arguments and reviewed the submitted representative sample of information.¹

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 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 Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. 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

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

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) (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 4-5 (1988). 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).

You have marked the information you seek to withhold on the basis of the informer’s privilege. You inform us the requested information identifies an individual who reported a possible violation of section 341.034(e)(1) of the Health and Safety Code. You explain the commission has the authority to enforce civil and criminal violations of environmental laws in Texas. You further state violations of this environmental law may result in administrative penalties under section 341.049 of the Health and Safety Code and civil penalties under section 341.048(b) of the Health and Safety Code. There is no indication the subject of the complaint knows the identity of the complainant. Based on your representations and our review of the information at issue, we conclude the commission may withhold the information you have marked, in addition to the information we have marked, under section 552.101 of the Government Code in conjunction with the informer’s privilege.² 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,



Charles Galindo Jr.
Assistant Attorney General
Open Records Division

CG/em

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 449737

Enc. Submitted documents

c: Requestor
(w/o enclosures)