



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2012

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

OR2012-13766

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# 463561 (PIR No. 12.06.11.05).

The Texas Commission on Environmental Quality (the "commission") received a request for documents relating to testing on a specified property and surrounding properties from a specified time period. You state you have released some of the requested information to the requestor. You claim that 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 information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. 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 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 claim portions of the submitted information, which you have highlighted, contain identifying information of a person who reported to the commission possible violations of section 101.4 of chapter 30 of the Texas Administrative Code and chapter 382 of the Health and Safety Code, also known as the Clean Air Act. See generally 30 T.A.C. § 101.4. You explain the commission is charged with investigating potential violations of environmental laws in Texas, which include air quality and nuisance odors. See Health & Safety Code §§ 382.002, .017; see also 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 §§ 7.051, .102. Based on your representations and our review, 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, however, the remaining information you have highlighted does not identify a complainant. Therefore, no portion of the remaining information at issue may be withheld under section 552.101 in conjunction with the informer’s privilege. As no further exceptions to disclosure are raised, 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 463561

Enc. Submitted documents

c: Requestor
(w/o enclosures)