



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2009

Mr. Robert Martinez
Director
Environmental Law Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2009-03656

Dear Mr. Martinez:

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# 338096 (TCEQ Request No. 09.01.02.07).

The Texas Commission on Environmental Quality (the "commission") received a request for information regarding the Franklin Treatment Plant. You state that you have released some of the responsive information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim 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. This section encompasses information protected by the informer's

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.

privilege, which has long been recognized by Texas courts. *See 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 that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 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 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (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).

You argue that the submitted information reveals the identity of persons who have reported a possible violation of the law. The submitted information establishes that the informers in this instance reported possible violations of section 112.31 of title 30 of the Texas Administrative Code. The submitted information also shows that the informers reported these alleged violations to the commission, the administrative entity responsible for enforcing the code section. Upon review we conclude that the commission may withhold the information that we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. You also claim that the information you have highlighted in yellow that identifies a Franklin Treatment Plant employee is excepted under section 552.101 in conjunction with the informer's privilege. However, the employee at issue did not report a possible violation of section 112.31 or any other statute to the commission, instead, the employee was merely consulted regarding the plant's operations. Accordingly, the commission may not withhold the employee's identifying information under section 552.101 in conjunction with the informer's privilege.

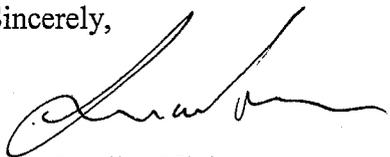
The remaining information contains personal e-mail addresses. Section 552.137 of the Government Code requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *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). 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.

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 that 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 at (512) 475-2497.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/dls

Ref: ID# 338096

Enc. Submitted documents

c: Requestor
(w/o enclosures)