



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2009

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

OR2009-12094

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# 353692 (PIR No. 09.06.08.04).

The Texas Commission on Environmental Quality (the "commission") received a request for information pertaining to a specified property. You state you have released some of the requested information to the requestor. You claim that a portion of the submitted information is 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The common-law informer's privilege, which is incorporated into the Act under section 552.101, has long been recognized by Texas courts. *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 (1998), 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). However, the informer’s privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro v. United States*, 353 U.S. 53, 60 (1957).

You state that the submitted information is related to complaints of alleged violations of chapter 26 of the Texas Water Code. *See* Water Code § 26.121. You explain that the commission has authority to enforce these environmental laws under sections 7.052 and 7.102 of the Texas Water Code. You further state that there are administrative and civil penalties for a violation of those code sections. *See id.* §§ 7.051, 7.052, 7.102. Based on your representations and our review of the submitted information, we conclude that some of the highlighted information is protected by the common-law informer’s privilege and may be withheld on that basis under section 552.101 of the Government Code. We have marked the information that the commission may withhold under section 552.101 in conjunction with the informer’s privilege. The remaining highlighted information does not identify an individual, and therefore may not be withheld under section 552.101 in conjunction with the informer’s privilege. As you raise no other exception to disclosure, the remaining information must be released 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, 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 353692

Enc. Submitted documents

cc: Requestor
(w/o enclosures)