



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 14, 2009

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

OR2009-17612

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# 362573 (PIR # 09.09.09.04).

The Texas Commission on Environmental Quality (the "commission") received a request for information relating to a specified location. You state the commission has released some of the responsive information. 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 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 (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. 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 consists of a complaint of an alleged violation of section 101.4, Title 30 of the Texas Administrative Code and of chapter 382 of the Health and Safety Code (the Texas Clean Air Act). You explain that the commission has authority to enforce these laws under sections 5.103 and 7.102 of the Texas Water Code and section 382.002 of the Health and Safety Code. You further state that there are administrative and civil penalties for violations of the laws at issue. *See* Water Code §§ 7.052, 7.102. Based on your representations and our review of the submitted information, we conclude that the commission may withhold some of the information you have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. However, we find the remaining information you have marked does not identify or tend to identify a complainant. We have marked the information that may be withheld under section 552.101 of the Government Code in conjunction with the informer's privilege. The remaining submitted 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](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,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/jb

Ref: ID# 362573

Enc. Submitted documents

c: Requestor  
(w/o enclosures)