



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2011

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

OR2011-09329

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# 422509 (PIR No. 11.04.12.03).

The Texas Commission on Environmental Quality (the "commission") received a request for nine categories of information related to two named individuals. You state the commission has released most of the requested information. You claim the marked portions of Attachment C 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. This exception encompasses information protected by the common-law informer's 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 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). 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 assert the marked portions of Attachment C identify complainants who reported alleged violations of section 101.4 of title 30 of the Texas Administrative Code and Chapter 382 of the Texas Health and Safety Code, also known as the Texas Clean Air Act. You explain the commission has the authority to enforce these laws under Texas Water Code sections 5.103 and 7.102. *See* Water Code §§ 5.103, 7.102. You also state there are administrative and civil penalties for a violation of these sections. *See id.* §§ 7.051, .102. Furthermore, you represent the entity accused of the alleged violations does not know the identity of the complainants. Based on your representations and our review, we conclude the commission may withhold the marked complainant identifying information in Attachment C under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eb

Ref: ID# 422509

Enc. Submitted documents

c: Requestor
(w/o enclosures)