



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2013

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

OR2013-05391

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# 483665 (PIR No. 13-10976).

The Texas Commission on Environmental Quality (the "commission") received a request for the report of a specified complaint. You state you have released some of the requested information to the requestor. You claim 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. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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).

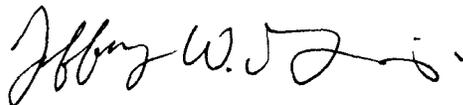
You state portions of the submitted information, which you have marked, identify a complainant who reported a violation of chapter 361 of the Health and Safety Code and

chapter 26 of the Water Code to the commission. *See* Health & Safety Code §§ 361.017 (commission is responsible for regulation of hazardous waste), .061; *see also* Water Code § 26.121 (commission is responsible for regulation of unauthorized discharges). You state the commission is charged with the authority and duty to enforce civil and criminal violations of environmental laws in Texas. You explain sections 5.013, 7.002, 7.031, and 7.073 of the Water Code make the commission responsible for enforcing these environmental laws. *See* Water Code §§ 5.013, 7.002, 7.031, 7.073. You also state a violation of the relevant portions of chapter 361 of the Health and Safety Code and chapter 26 of the Water Code carries administrative and civil penalties. *Id.* §§ 7.052, .102. You state, and the submitted request reveals, the requestor does not already know the identity of the informer. Based upon your representations and our review, we conclude the commission has demonstrated the applicability of the common-law informer's privilege to the information you have marked. Therefore, the commission may withhold the marked information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The commission must release the remaining information.

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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 483665

Enc. Submitted documents

c: Requestor
(w/o enclosures)