



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2014

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

OR2014-08516

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# 523068 (TCEQ PIR No. 14-15600).

The Texas Commission on Environmental Quality (the "commission") received a request for all information regarding ten specified complaints. You inform us you have released some of the submitted information to the requestor. You claim some 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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 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) (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 4-5.

You seek to withhold the identifying information you have marked under the common-law informer’s privilege. You state the marked information reveals the identities of complainants who reported possible violations of the state’s environmental regulations to the commission, which is the entity with the authority and duty to enforce such violations. You explain the alleged violations carry civil and administrative penalties. Finally, you state there is no indication the subjects of the complaints know the identities of the complainants. Based on your representations and our review, we conclude the commission may withhold the complainants’ identifying information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The commission must release the remaining information 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 523068

Enc. Submitted documents

c: Requestor
(w/o enclosures)