



January 28, 2015

Mr. Jesse M. Blakley
Assistant District Attorney
County of Brazoria
111 East Locust
Angleton, Texas 77515

OR2015-01621

Dear Mr. Blakley:

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# 552461.

The Brazoria County Environmental Health Department (the "county") received a request for information pertaining to a specified landfill. You state you are releasing some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of the requested information may implicate the proprietary interests of Brazosport Plumbing and Heating Co. ("Brazosport"). Accordingly, you inform us, and provide documentation showing, you notified Brazosport of the request and of its right to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from

Brazosport explaining why its information should not be released. Therefore, we have no basis to conclude Brazosport has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the county may not withhold any of the information at issue on the basis of any proprietary interest Brazosport may have in it.

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 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 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 contend Exhibit 3 identifies individuals who reported civil and criminal violations of environmental statutes and regulations to the county, which you state has quasi-criminal law enforcement authority. You explain the county may issue citations to individuals who violate the relevant environmental statutes and regulations. You state the county has no information indicating the subject of the complaints knows the identities of the informers. Accordingly, we conclude the county may withhold the identifying information of the informers, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, we find you have failed to demonstrate how the remaining information at issue consists of the identifying information of an informer for the purposes of the informer’s privilege. Therefore, the county may not withhold the remaining information in Exhibit 3 under section 552.101 on that basis. The remaining 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.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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 552461

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Brazosport Plumbing & Heating Company
1411 Yellowstone
Freeport, Texas 77541
(w/o enclosures)