



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 24, 2015

Mr. Robert Martinez
Director
Environmental Law Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2015-07953

Dear Mr. Martinez:

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# 563958 (PIR No. 15-20738).

The Texas Commission on Environmental Quality (the "commission") received a request for all records pertaining to a specified environmental complaint. You state the commission has released some responsive information to the requestor. You claim 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. Section 552.101 encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identity of a person who has reported 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 identity of an individual who has reported violations of statutes to the police or similar law-enforcement agencies, as well as an individual who has reported 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

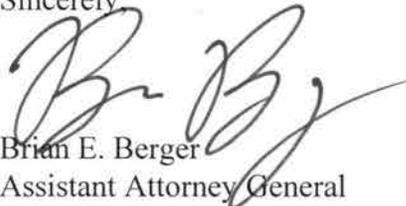
a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988).

You state portions of the submitted information identify a complainant who reported violations of law to the commission. You inform us the commission is the governmental body charged with the authority and duty to enforce the relevant law. You also state a violation of the relevant law carries administrative and civil penalties. *See, e.g.*, Water Code §§ 7.102, 26.121. You further state there is no evidence the subject of the complaint is aware of the identity of the complainant. Based on these representations and our review, we conclude you have demonstrated the applicability of the common-law informer's privilege to the information we have marked. Therefore, the commission may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have not demonstrated how any of the remaining information identifies an individual who made a report of a violation of law for purposes of the informer's privilege. Accordingly, the commission may not withhold any of the remaining information 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.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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 563958

Enc. Submitted documents

c: Requestor
(w/o enclosures)