



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2016

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

OR2016-00105

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# 592735 (P.I.R. No. 16-24213).

The Texas Commission on Environmental Quality (the "commission") received a request for (1) information relating to complaints and investigations against T.H. Precision, LLC ("Precision"), a named individual, or the business located at a specified address; and (2) Precision's permits. The commission states it has made some of the requested information available to the requestor. The commission states it has redacted e-mail addresses under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).¹ The commission claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the commission claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937

¹Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

(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. 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).

The commission states the information it has marked reveals the identities of complainants who reported possible violations of law that carry civil penalties to the commission. The commission informs us it is the governmental body charged with the authority and duty to enforce civil and criminal violations of environmental laws in Texas, including the violations at issue. There is no indication the subject of the complaints knows the identities of the complainants. Based on the commission's representations and our review, we conclude the information it has marked identifies the complainants; thus, the commission may withhold the information it has marked 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 592735

Enc. Submitted documents

c: Requestor
(w/o enclosures)