



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 25, 1994

Mr. Paul Shinkawa  
Acting General Counsel  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744

OR94-408

Dear Mr. Shinkawa:

The Texas Parks and Wildlife Department ("the department") asks whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. This request was assigned ID# 23067.

The department received a request for information regarding an ongoing departmental investigation. The department contends that this investigation concerns possible criminal conduct. The requestor asked for telephone bills and receipts; reservation and receipt books; liability release forms; a jewelry appraisal; and a copy of a personnel policy. The department indicates that it has already satisfied each of these requests. The requestor also seeks copies of all the evidence pertaining to the ongoing investigation, including written complaints, affidavits and statements.<sup>1</sup> The department contends that section 552.108 of the Open Records Act excepts that requested information from required public disclosure. Section 552.108 excepts from public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation or prosecution of crime . . . .
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . .

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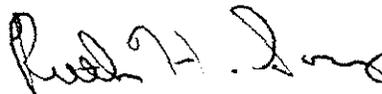
<sup>1</sup>The department also submitted to us various copies of correspondence between the requestor and the department which do not appear to be responsive to the request. We did not review these non-responsive documents.

This section may be invoked by the proper custodian of information relating to an ongoing investigation or prosecution of criminal conduct. The exception is applicable even if the custodian is not a law enforcement agency if the investigation may lead to the filing of criminal charges. Open Records Decision No. 474 (1987) at 4-5. When an agency claims the exception, the pertinent question is if release of the information would undermine "a legitimate interest" relating to law enforcement or the investigation or prosecution of crime. Open Records Decision No. 434 (1986) at 2.<sup>2</sup> We have reviewed the documents submitted to this office and conclude that most of the documents may be withheld under section 552.108 of the Open Records Act. However, the department may not withhold the affidavit made by the requestor's client, since release of this document to the requestor will not undermine the department's legitimate law enforcement or investigative interest.

Included in the documents submitted for our review were copies of telephone bills and receipts, excerpts from reservation and receipt books, and liability release forms. A number of these copies had handwritten notes made on them. We are informed that the department has already released the originals of these items, but that the items the department seeks to withhold are copies with investigative notes written on them. The documents with investigative notes which relate to this ongoing investigation may be withheld under section 552.108. Also among the submitted items are documents signed, reviewed, or written by the requestor's client in his official capacity as a state employee. These agency records have not been made public simply because the records were made, signed, or seen in the employee's official capacity. Open Records Decision No. 468 (1987) at 3. Because these documents relate directly to the ongoing investigation, they may also be withheld under section 552.108.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

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<sup>2</sup>We have been advised that there is a personnel policy or departmental guideline which might require release of any of these documents. We do not decide how such a policy or guideline would affect the release of these documents. However, some of the information in the documents may be confidential under the section 552.101 common-law privacy provision. Please note that the improper release of information deemed confidential by law, e.g., the common-law right of privacy, is a criminal offense. Gov't Code § 552.352(a).

RHS/MAR/rho

Ref.: ID# 23067

Enclosures: Submitted documents

cc: Ms. Cindy R. Weir-Ervin  
332 North Texas  
Odessa, Texas 79761  
(w/o enclosures)