



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1995

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

OR95-983

Dear Mr. Shinkawa:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30102.

The Texas Parks and Wildlife Department (the "department") received an open records request for certain records relating to several commercial shrimp farms. You advise us that you have made much of the requested information available to the requestor. You seek to withhold a seven page report, however, and argue that sections 552.108 and 552.111 of the Government Code except this information from required public disclosure.

Section 552.108 excepts from required 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

When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first

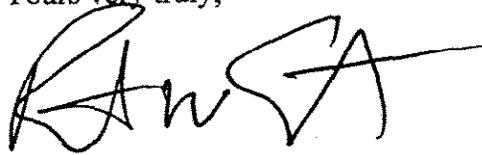
page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Otherwise, when the “law enforcement” exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how its release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 2 (citing *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.*

The report you seek to withhold concerns possible criminal law enforcement actions under statutes that authorize the department to take enforcement action. *See* Water Code § 26.215. Thus, the department is a law enforcement agency within the meaning of section 552.108 for purposes of this information. You do not advise that the report is part of a pending criminal investigation, and the information itself indicates that it is not part of a pending investigation. Therefore, the information may be withheld only to the extent that its release would unduly interfere with law enforcement. You state that the report “includes information gathered by an undercover law enforcement officer.” Information that identifies an undercover agent may be withheld under section 552.108. Open Records Decision No. 211 (1978) at 3-4. You have not indicated, however, how release of any of the remainder of the information would unduly interfere with law enforcement, nor does the information reveal this on its face. The release of commonly known, routine investigative procedures will not unduly interfere with law enforcement. *See* Open Records Decision No. 216 (1978). Therefore, no other information may be withheld pursuant to section 552.108.

You also contend that the report is excepted from disclosure under section 552.111. Section 552.111 excepts from disclosure “only those internal agency communications consisting of advice, recommendations, opinions and other material reflecting the deliberative or policymaking processes of the governmental body at issue.” Open Records Decision No. 615 (1993) at 5. This exception is intended to protect advice and opinions given on policy matters and to encourage frank and open discussions within an agency in connection with the agency’s decision-making processes. *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 412 (Tex. App.—Austin 1992, no writ) (citing *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.)). This section does not protect facts or written observations of facts. Open Records Decision No. 615 (1993) at 5. Most of the documents you submitted for review contain factual information and thus may not be withheld under this exception. We have marked certain information containing advice, opinion, or recommendations relating to the policy functions of the department that you may withhold from public disclosure under section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'RWS', with a long horizontal line extending to the right.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/rho

Ref.: ID# 30102

Enclosures: Marked documents

cc: Mr. Rey Brown, Jr.
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(w/o enclosures)