



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 13, 1996

Mr. John A. Riley
Litigation Support Division
Texas Natural Resource Conservation
Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR96-1437

Dear Mr. Riley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101032.

The Texas Natural Resource Conservation Commission (the "TNRCC") received an open records request for copies of "all documents regarding Sunburst Shutters Texas, Inc. or a TNRCC investigation resulting in the issuance of a Grand Jury Subpoena No. 421-3 to Sunburst Shutters Texas, Inc." You seek to withhold the requested information pursuant to sections 552.101, 552.103, and 552.108 of the Government Code.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n 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." Gov't Code § 552.108; *see Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). In certain circumstances, an agency that is not a law-enforcement agency may claim section 552.108. *See* Open Records Decision No. 493 (1988). This office has determined that if an investigation by an administrative agency reveals possible criminal conduct that the agency intends to report or already has reported to the appropriate law-enforcement agency, section 552.108 will apply to the information gathered by the administrative agency. *Id.* You state that TNRCC's Special Investigation Unit is participating in the criminal investigation of Sunburst Shutters Texas, Inc. with the United States Attorney's Office for the Eastern District of Texas and

the Environmental Protection Agency's Criminal Investigation Division and that the requested information is maintained in TNRCC's criminal case file. Accordingly, we conclude that the requested information may be withheld from public disclosure pursuant to section 552.108 of the Government Code.¹ Of course, you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Todd Reese". The signature is written in a cursive style with a long horizontal stroke at the end.

Todd Reese
Assistant Attorney General
Open Records Division

RWP/rho

Ref.: ID# 101032

Enclosures: Submitted documents

cc: Ms. Allison K. Exall
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1700 Pacific Avenue, Suite 4100
Dallas, Texas 75201-4675
(w/o enclosures)

¹As we resolve this matter under section 552.108, we do not address the other exceptions to disclosure which you have raised.