



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 15, 1996

Mr. Kevin McCalla
Legal Division Director
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR96-1470

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100391.

The Texas Natural Resource Conservation Commission (the "commission") received a request for all information concerning the alleged misuse of state property by a certain employee. You state that much of the requested information will be made available to the requestor. You claim, however, that several documents or portions of the documents which are responsive to the request are excepted from required public disclosure by sections 552.101, 552.107, and 552.108 of the Government Code. You have submitted a representative sample of the types of information you wish to withhold.

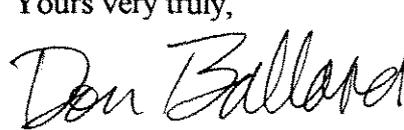
In this instance, you state that a commission employee reported a possible violation of the prohibition against use of state property for any purpose other than state business to commission management. Gov't Code § 403.273(d). A violation of the state law in question carries civil or criminal penalties. You state that you have referred the possible criminal conduct to the District Attorney's Office who is investigating the case. You have provided this office with a letter from Ms. Claire Dawson-Brown, Director of the Public Integrity Unit of the Travis County District Attorney's Office. She states that the "District Attorney has a continuing open criminal investigation" on the matter at issue. She also requests that no records be released at this time.

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 372 (1983), 474 (1987); *see also* Attorney General Opinion MW-575 (1982) at 1-2; Open Records Decision No. 493 (1988) at 2. Furthermore, the need of another governmental body to

withhold the requested information may provide a compelling reason for nondisclosure under section 552.108. Open Records Decision 586 (1991). Under these circumstances, we believe that the commission may withhold the requested documents in their entirety under section 552.108.¹

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.² If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 100391

Enclosures: Submitted documents

cc: Mr. Arthur J. Hopkins
3001 Gregg Lane
Manor, Texas 78563
(w/o enclosures)

¹ Because we are able to make a determination under section 552.108, we do not address your other stated exceptions.

² In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.