



April 27, 1999

Mr. Jim Phillips
Deputy Director, Office of Legal Services
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR99-1150

Dear Mr. Phillips:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 123620.

The Texas Natural Resource Conservation Commission received a request for all documents concerning the indictments handed down by the Travis County grand jury against Bennard Nelson and Tracy Frank Byas. You claim that the requested information is excepted from disclosure by section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted sample documents.¹

Section 552.108, the "law enforcement exception," provides in relevant part as follows:

- (a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

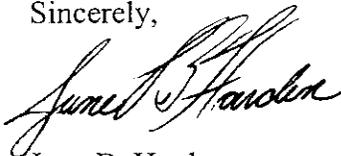
¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

This office has held that records of criminal investigations conducted by governmental agencies may be withheld from disclosure under limited circumstances. For example, records that otherwise qualify for the section 552.108 exception, such as documentary evidence in a police file on a pending case, do not necessarily lose that status while in the custody of an agency not directly involved with law enforcement. Open Records Decision No. 272 at 1-2 (1981). Similarly, in construing the statutory predecessor to section 552.108, this office concluded that if an investigation by an administrative agency reveals possible criminal conduct that the agency intends to report or has already reported to the appropriate law enforcement agency, then section 552.108 will apply to the information gathered by the administrative agency if its release would unduly interfere with law enforcement. Open Records Decision No. 493 at 2 (1988) (construing predecessor statute).

You explain that the requested documents concern criminal conduct that has been reported to the appropriate law enforcement officials, and that the case is pending with the Travis County District Attorney's Office. As the proper custodian of the information, you have invoked section 552.108 and shown that release of the requested information would interfere with the detection, investigation or prosecution of crime. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases); *see also* Open Records Decision No. 493 (1988). Therefore, we conclude that the requested information may be withheld under section 552.108(a)(1).²

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

²You have also submitted copies of the indictments for our review. We assume that these documents were submitted for informational purposes only. Consequently, this ruling does not address the release of the submitted indictments.

Ref.: ID# 123620

encl. Submitted documents

cc: Mr. Ralph Haurwitz
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767
(w/o enclosures)