



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 17, 2011

Ms. Kathleen Decker  
Director - Litigation Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711

OR2011-02447

Dear Ms. Decker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 409481 (TCEQ PIR# 10.11.29.11).

The Texas Commission on Environmental Quality (the "commission") received a request for all records related to any complaints filed against a named individual. You state you have released some of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this

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<sup>1</sup>Although you initially raised sections 552.103, 552.107, and 552.111 of the Government Code, you did not submit to this office written comments stating the reasons why these sections would allow the information to be withheld. Thus, we assume you have withdrawn these exceptions. See Gov't Code §§ 552.301(e), .302.

<sup>2</sup>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.

exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state that the submitted information was generated by the commission's Environmental Crimes Unit during the course of a criminal investigation into possible violations of state criminal statutes. This office has previously determined that the Environmental Crimes Unit of the commission is a law enforcement agency for purposes of section 552.108.<sup>3</sup> You state Attachments C, D, and E concern a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is applicable to Attachments C, D, and E. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the commission may withhold Attachments C, D, and E under section 552.108(a)(2) of the Government Code.<sup>4</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

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<sup>3</sup>You inform us that the Environmental Crimes Unit was formerly known as the Special Investigations Unit.

<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 409481

Enc. Submitted documents

c: Requestor  
(w/o enclosures)