



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2011

Ms. Kathleen C. Decker
Director
Litigation Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2011-12257

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# 427890 (ORR# 1.06.07.10).

The Texas Commission on Environmental Quality (the "commission") received a request for information that pertains to litigation with the Gulf Chemical and Metallurgical Corporation ("GCMC"), including two specified spreadsheets, correspondence between the commission and GCMC relating to the spreadsheets, and correspondence relating to "GCMC's altering the effluent flow prior to sampling for permit compliance purposes." You state the commission has made some of the requested information available to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us Exhibit C was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-03722 (2011). In Open Records Letter No. 2011-03722, we determined the information at issue is not subject to the Act because it consists of records of the judiciary. We have no indication that the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, we conclude the commission may continue to rely on Open Records Letter No. 2011-03722 as a previous determination and may decline to release Exhibit C because it consists of judicial records that are not subject to the Act. *See* Gov't Code §§ 552.003, .0035; Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested

information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You assert Exhibits D and E are excepted from disclosure under section 552.108 of the Government Code. Initially, we consider the commission's assertion that its Environmental Crimes Unit (the "ECU") qualifies as a law enforcement agency for purposes of section 552.108. Section 552.108 is applicable only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 at 2 (1988), 287 (1981). Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. *See* Open Records Decision No. 199 (1978). An agency that does not qualify as a law enforcement agency may claim, under certain limited circumstances, that section 552.108 protects records in its possession. *See, e.g.,* Attorney General Opinion MW-575 (1982), Open Records Decision Nos. 493 (1988), 272 (1981).

The commission informs us the ECU is a specially segregated unit of the agency that is devoted to criminal law enforcement. The commission states the sole responsibility of the ECU is to conduct and participate in the detection, investigation, and prosecution of environmental crimes. The commission explains the staff of the ECU includes nine criminal investigators who are assigned only to criminal cases. The commission also informs us the ECU follows a law enforcement agency's protocol regarding the gathering and storage of evidence and information for the purpose of preserving the admissibility of evidence at a criminal trial. The commission also states ECU case files are segregated from those of the rest of the agency. Having considered all of the submitted arguments and reviewed the related documentation the commission has provided, we conclude the commission has demonstrated the ECU is a law enforcement agency for purposes of section 552.108 of the Government Code. *See A&T Consultants v. Sharp*, 904 S.W.2d 668, 677-78 (Tex. 1995) (comptroller may withhold from disclosure audit papers pursuant to section 552.108 to protect the comptroller's interest in enforcing the tax laws); Open Records Decision Nos. 320 at 1 (1982) (Texas National Guard is law enforcement agency for purposes of statutory predecessor), 127 at 8 (1976) (arson investigation unit of fire department is law enforcement agency), 126 at 5 (1976) (Attorney General's Organized Crime Task Force is law enforcement agency).

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to the criminal investigation of GCMC by the ECU that resulted in the criminal prosecution of GCMC by the Travis County District Attorney's Office (the "district attorney"). You inform us that on May 28, 2010, the defendant and the

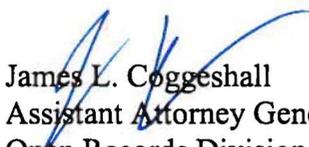
district attorney entered into a plea agreement “resolving some, but not all, of the violations relating to the [commission’s] criminal investigation.” The terms of the plea agreement, which lasts for two years, provide that GCMC agrees to waive all applicable statutes of limitations for criminal offenses related to the investigation, but not included in the plea agreement. You state the district attorney and ECU “are currently in the process of verifying GCMC’s compliance with the conditions of the plea agreement and determining whether additional criminal charges will be filed.” You also state “a final determination regarding GCMC’s compliance with the terms of the plea agreement has not been made, and [the commission] and the [district attorney] consider this to be an open case.” Based on this representation, we conclude the release of Exhibits D and E 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) (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). Therefore, we agree section 552.108(a)(1) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front-page offense and arrest information, the commissin may withhold Exhibits D and E under section 552.108(a)(1).¹

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, 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

¹As our ruling is dispositive, we do not address your other argument to withhold this information.

Ref: ID# 427890

Enc. Submitted documents

c: Requestor
(w/o enclosures)