



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2011

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

OR2011-17065

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# 436812 (PIR# 11.09.01.07).

The Texas Commission on Environmental Quality (the "commission") received a request for information related to a specified incident at a specified location. You state you have made available some of the requested information. You claim that 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 representative sample of information.¹

You assert the submitted information is 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

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.

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, 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)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 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 an ongoing criminal investigation by the ECU. Based on your representations and our review, we find that release of the submitted 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) (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 the submitted information.

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; ORD 127

(summarizing types of information considered to be basic information). Thus, with the exception of basic information the commission may withhold the submitted information under section 552.108(a)(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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 436812

Enc. Submitted documents

c: Requestor
(w/o enclosures)