



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 29, 1994

Mr. Andrew Sansom  
Executive Director  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744

OR94-765

Dear Mr. Sansom:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (former V.T.C.S. article 6252-17a). Your request was assigned ID# 28042.

The Texas Parks and Wildlife Department ("TPWD") has received a request for information regarding complaints filed against a stable. You have submitted documents regarding complaints about a collared peccary for our review. You assert that this information is excepted under section 552.108 of the Government Code.

Section 552.108 provides that:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

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 that relates to the incident. Open Records Decision Nos. 474 (1987); 372 (1983). After a file has been closed, either by prosecution or by administrative decision, the availability of section 552.108 is greatly restricted. Open Records Decision No. 320 (1982). The test

for determining whether information regarding closed investigations is excepted from public disclosure under section 552.108 is whether release of the records would unduly interfere with the prevention of crime and the enforcement of the law. Open Records Decision No. 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3.

We gather from the records that the TPWD investigation regarding the complaint is closed. You state that the complainant requested that her identity be kept confidential because she feared retaliation and that in addition release of the information "could deter other witnesses from coming forward and/or cooperating with the law enforcement activities of [TPWD]." In Open Records Decision No. 297 (1981), which you cite, this office concluded that the fact that a witness has been given an express promise of confidentiality is not necessarily determinative under section 552.108. Rather, the governmental body asserting section 552.108 must demonstrate that "disclosure might either subject the witness[] to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers." Open Records Decision No. 297 at 2. Your arguments are conclusory. You have not provided us with any information, other than that the complainant herself fears retaliation,<sup>1</sup> that would demonstrate that release of the records might result in the harassment or intimidation of the complainant or harm the prospects of future cooperation between witnesses and law enforcement officers. Therefore, we conclude that the requested information may not be withheld under section 552.108.

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

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/MAR/rho

Ref.: ID# 28042

Enclosures: Submitted documents

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<sup>1</sup>There is no indication in the file that TPWD promised the complainant confidentiality.

cc: Ms. Debbi Hill  
Punkin Hill Stables  
10401 Fairview  
Conroe, Texas 77385  
(w/o enclosures)