



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 22, 2018

Ms. Natalie Broaddus
Assistant District Attorney
Brazoria County
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2018-01327

Dear Ms. Broaddus:

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# 692720.

The Brazoria County Environmental Health Department (the "department") received a request for information pertaining to a specified complaint. 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.

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(a)(1) must 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). Section 552.108 applies 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 (1988), 287 (1981)*. This section is generally not applicable to records created by an agency whose chief function is essentially regulatory in nature. *See Open Records Decision No. 199 (1978)*.

We understand Brazoria County (the “county”) was designated by the Texas Commission of Environmental Quality (the “commission”) as an authorized agent to implement and enforce rules pursuant to chapter 366 of the Health and Safety Code. *See* Health & Safety Code § 366.031 (commission shall designate authorized agent if certain criteria are met). As a department of an authorized agent, you state the department is charged with enforcing public nuisance violations pursuant to chapter 343 of the Health and Safety Code. *See* Health & Safety Code ch. 343 (concerning abatement of public nuisances). You inform us chapter 343 authorizes the department to seek injunctions or criminal penalties against violators. *See id.* §§ 343.012 (making public nuisance under Health & Safety § 343.011(b) a misdemeanor), .013 (permitting county to bring suit for injunction to remedy violation of chapter 343). We note section 343.012 provides an offense under section 343.012 is a misdemeanor punishable by a fine or, in certain circumstances, confinement in jail, or both a fine and confinement. *Id.* § 343.012(b), (c). Therefore, we agree the department is a law enforcement agency for purposes of section 552.108 when enforcing public nuisance violations. You state the submitted information relates to ongoing investigations of possible violations of chapter 343 of the Health and Safety Code, and release of this information would interfere with the detection, investigation, or prosecution of crime. We note, however, the information at issue contains a notice of violation. Because a copy of this notice was provided to the alleged offender, we find you have failed to demonstrate the release of this information will interfere with the detection, investigation, or prosecution of crime. Thus, the department may not withhold the notice of violation, which we marked, under section 552.108(a)(1). However, based on your representations and our review, we find the release of the remaining 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). Accordingly, section 552.108(a)(1) is applicable to the remaining 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information and the notice of violation, which we marked for release, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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.texasattorneygeneral.gov/open/>

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 692720

Enc. Submitted documents

c: Requestor
(w/o enclosures)