TCEQ withholding brief and OAG ruling

December 18, 2025 and March 3, 2026

RECORD TYPE

Agency correspondence

SELECTION AND CONTEXT

The four-page TCEQ letter and two-page OAG ruling OR2026-008158, as reproduced in the August 14 TLE binder. The ruling addresses withholding based on the agency's stated investigation status; it is not a finding that a violation occurred. Attachments A–C referenced by TCEQ are not supplied by this selection. Personal email and handwritten signature images are redacted; typed official names remain. The OAG ruling is already represented in the source library; it is retained here for context.

SOURCE

Walmart_131_TLE_Supplemental_Evidence_Binder_2026-08-14.pdf

ORIGINAL PDF PAGES

28, 29, 30, 31, 32, 33

SCOPE

Only the following selected pages are included. This copy does not clear or reproduce the complete source binder.

Brooke T. Paup, *Chairwoman*
Catarina R. Gonzales, *Commissioner*
Tonya R. Miller, *Commissioner*
Kelly Keel, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 18, 2025

The Honorable Ken Paxton
Office of the Attorney General
Open Records Division
Price Daniel Sr. Building, 6th Floor
209 W. 14th Street
Austin, Texas 78701

Attention: Tamara Smith, Division Chief, Open Records Division

Re: Request for Attorney General Decision
Public Information Act Request Regarding Walmart Complaint
TCEQ PIR No. 26-110027

Dear Attorney General Paxton:

The Texas Commission on Environmental Quality (TCEQ) received a Public Information Act (PIA) request for information related to a complaint regarding a particular Walmart located in Mount Pleasant, Texas (Attachment A). This PIA request (PIR) was made by Kyle Moring on November 22, 2025, and was received by TCEQ on November 24, 2025. In observance of Thanksgiving, TCEQ offices operated with minimum staffing on November 26, 2025, a day that TCEQ's Executive Director designated as a nonbusiness day in accordance with Tex. Gov't Code § 552.0031(f), and closed on November 27 and 28, 2025, days which constitute nonbusiness days under Tex. Gov't Code § 552.0031(a)(2). Therefore, the tenth business day after receipt of the request was December 11, 2025. On December 11, 2025, TCEQ submitted its request for a formal opinion regarding this matter. The fifteenth business day after receipt of the request is December 18, 2025. TCEQ now submits its formal arguments and representative samples of the documents in question for review.

TCEQ has withheld responsive information it believes to be excepted from disclosure under the PIA. Pursuant to Tex. Gov't Code § 552.301(d), the requestor was notified on December 11, 2025, that TCEQ withheld responsive information and requested an attorney general decision regarding its confidentiality.

In accordance with Tex. Gov't Code § 552.301, TCEQ requests a formal opinion on this matter. It is our interpretation that certain documents are excepted from disclosure under Tex. Gov't Code §§ 552.108(a)(1). In accordance with Tex. Gov't Code § 552.301(e), TCEQ submits the following information: (1) written comments explaining why the exceptions raised are applicable; (2) this signed statement evidencing the date the request was received; (3) a copy of the request for information (Attachment A); and (4) representative samples of the information at issue, labeled to indicate which exceptions apply (Attachment B).

TCEQ's Environmental Crimes Unit is a "Law Enforcement Agency"

While TCEQ as a whole is not a "law enforcement agency," the Environmental Crimes Unit (ECU) is a distinct part of TCEQ devoted *solely* to the detection, investigation, and prosecution of environmental crimes. Prior Open Records decisions found that a portion of an agency whose

primary function is to investigate crimes and enforce criminal laws may be deemed a law enforcement agency.[1]

The ECU was established as a result of the Governor creating the Texas Environmental Task Force through Executive Order (Attachment C, Part 1). The purpose of the ECU is to prosecute environmental crimes in coordination with other state and federal law enforcement agencies; its sole responsibilities are investigating and prosecuting alleged criminal violations of environmental laws and fraud committed against agency programs. The ECU consists of one manager, one support person, two attorneys, and nine criminal investigators. The criminal investigators assigned to this section attended advanced environmental crimes investigations training at the Federal Law Enforcement Training Center in Glynco, Georgia, and are assigned only criminal cases. The attorneys assigned to this section are trained and experienced in criminal law, engage solely in matters related to the detection, investigation, and prosecution of environmental crimes, and have been appointed as special prosecutors on numerous occasions to prosecute environmental crimes. Additionally, the ECU uses its criminal environmental enforcement expertise to conduct training for other law enforcement agencies and prosecutors on the investigation and prosecution of environmental crimes. TCEQ budgets the ECU separately from other agency sections that involve legal and enforcement activities. Pursuant to Transportation Code § 721.003, TCEQ adopted 30 Tex. Admin. Code § 1.6 to except vehicles used by the ECU from the general requirement to have TCEQ inscriptions on TCEQ vehicles, allowing the ECU to maintain anonymity during criminal investigations.

The ECU follows law enforcement agency protocols for the storage and gathering of evidence and information to preserve its admissibility in a criminal trial. ECU case files are kept separate from other agency files and are not filed with or maintained by central records. ECU's files are stored in a secure location only ECU personnel can access. Communications regarding ECU cases are kept strictly confidential, and all e-mails relating to criminal investigations are password protected. Generally, there is no vertical or horizontal copying or sharing of communications outside of the ECU. On rare occasions when an ECU investigator discovers a hazard to human health or the environment that requires immediate attention from the civil side of the agency, such as an emergency response, emergency order, or temporary injunction, it is necessary for ECU staff to provide information on a criminal case to non-ECU TCEQ staff. When such internal disclosure is necessary, the type and amount of information shared is limited to a need-to-know basis and agency confidentiality is maintained at all times.

Both the Federal Bureau of Investigation and the Texas Department of Public Safety granted the ECU authorization to access criminal history records in accordance with the Code of Criminal Procedure Chapter 60 and the Tex. Gov't Code Chapter 411, which limits access to agencies involved in the administration of criminal justice (Attachment C Part 2). Furthermore, the Texas Department of Public Safety approved the ECU's request for membership to the Texas Law Enforcement Telecommunications System, which provides direct access to the National Law Enforcement Telecommunications System (NLETS), the National Crime Information Center (NCIC), Texas Crime Information Center (TCIC), and the Texas Law Enforcement Telecommunications System (TLETS) databases (Attachment C, Part 3).

TCEQ's Environmental Crimes Unit is a distinct part of the agency devoted *solely* to the detection, investigation, and prosecution of environmental crimes. The Office of the Attorney General's Open Records Division has consistently treated the ECU as a law enforcement agency in numerous PIA rulings since the ECU's inception (Attachment C, Part 4). Therefore, the ECU

[1] OR2016-09112, citing 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). *See also* Open Records Decision Nos. 493 (1988) at 2; 287(1981) at 2.

qualifies as a law enforcement agency whose records and information should be protected from disclosure under Tex. Gov't Code § 552.108.

Section 552.108, Law Enforcement Records

Tex. Gov't Code § 552.108 excepts from disclosure information held by a law enforcement agency if its release would interfere with the detection, investigation, or prosecution of crime. TCEQ's Environmental Crimes Unit is a law enforcement agency for the purposes of § 552.108, as explained above. Texas Courts consistently held that information relating to a pending investigation or prosecution is protected from disclosure under § 552.108(a)(1), because the release of such information would presumptively interfere with the detection, investigation, or prosecution of a crime.[2]

The records contained in Attachment B were generated or compiled during the course of an ongoing criminal investigation into possible criminal violations of Texas Water Code § 7.162 violations relating to hazardous waste, and violations Texas Health and Safety Code § 365.012(b), illegal dumping. The ECU criminal investigator followed law enforcement protocols for the storage and gathering of evidence and information to preserve its admissibility in a criminal trial. The release of this information, which is related to an ongoing criminal investigation, would interfere with the detection, investigation, or prosecution of alleged criminal conduct. Therefore, the information found in Attachment B should be excepted from disclosure pursuant to Tex. Gov. Code § 552.108.

Conclusion

We ask that TCEQ be able to withhold from disclosure the information excepted under Tex. Gov't Code § 552.108(a)(1). In accordance with Tex. Gov't Code § 552.301, I request a formal opinion on this matter.

I appreciate your response to this request. If you have any questions about this matter, please contact Joel Cordero, Staff Attorney, Litigation Division, Office of Legal Services at joel.cordero@tceq.texas.gov .

Sincerely,

[redacted]

Gitanjali Yadav, Deputy Director
Litigation Division, Office of Legal Services
Texas Commission on Environmental Quality

Enclosures

cc: Kyle Moring, [redacted], *via e-mail* (without attachments)

[2] *Houston Chronicle Publ'g Co. v. City of Houston,* 513 S.W.2d 177, 184-85 (Tex. Civ. App.-Houston [14th Dist.] 1975), *writ ref'd n.r.e.,* 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interest that are present in active cases).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this referral was sent, via the Office of the Attorney General's Public Information Act Electronic Filing System, on December 18, 2025, to:

The Honorable Ken Paxton
Office of the Attorney General
Open Records Division
Price Daniel, Sr. Building, 6th Floor
209 West 14th Street
Austin, Texas 78701

Attention: Tamara Smith, Division Chief, Open Records Division



Peter K. Ng'ang'a, Legal Assistant
General Law Division

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 3, 2026

Ms. Gitanjali Yadav
Deputy Director
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

OR2026-008158

Dear Ms. Yadav:

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# 25-057608 (TCEQ PIR No. 26-110027).

The Texas Commission on Environmental Quality (the "commission") received a request for certain information regarding 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 representative sample of information.[1] We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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." *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *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 relates to an open criminal investigation by the commission's Environmental Crimes Unit ("ECU"). You assert release of the information at issue would interfere with the ongoing

[1] 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.

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criminal investigation. This office has previously determined the commission's ECU is a law enforcement agency for purposes of section 552.108. Based upon your representations and our review, we conclude the release of the information at issue 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, the commission 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 https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Jason Stevens
Assistant Attorney General
Open Records Division

JS/tb

Ref: ID# 25-057608

c: Requestor