



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1994

Mr. G. Mike Davis
State Fire Marshal
Texas Commission on Fire Protection
P.O. Box 2286
Austin, Texas 78768-2286

OR94-844

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 29643.

The Texas Commission on Fire Protection (the "commission") has received a request for information relating to a certain fire. Specifically, the requestor seeks the "state fire marshal's report" on a fire that occurred on June 8, 1994, at Route 1, Box 234, Bellville, Texas. You advise us that you have made some of the requested information available to the requestor. You object to release of the requested fire report, however, and claim that sections 552.101 and 552.108 of the Government Code except it from required public disclosure.

Section 552.108 excepts from required public disclosure:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . .
[and]

(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

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under

active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how its release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 2-3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.* at 2.

You advise us that the requested information relates to a pending investigation conducted by the Office of the State Fire Marshal. We have examined the information that you seek to withhold under section 552.108 and conclude that it may be withheld under section 552.108 of the Government Code except to the extent that it contains first page offense report material.¹ *See* Open Records Decision No. 134 (1976) (concluding that section 552.108 excepts portions of State Fire Marshal's arson investigation). As we resolve this matter under section 552.108, we need not address the applicability of section 552.101 at this time.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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¹In reaching our conclusion here, 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, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

Ref.: ID# 29643

Enclosures: Submitted documents

cc: Mr. Dale Thumann
Carson-Brooks, Inc.
P.O. Box 70767
Houston, Texas 77270-0767
(w/o enclosures)