



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 24, 1995

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

OR95-086

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30051.

The Texas Commission on Fire Protection, (the "commission") received an open records request for certain records that you contend may be withheld from the public pursuant to section 552.108 of the Government Code. In your letter to this office, you contend that the record identified as INV04 contains information the release of which "would unduly interfere with law enforcement, particularly in view of the continuing investigation in this matter."

To secure the protection of section 552.108, a governmental body must demonstrate that the release of the requested information would unduly interfere with law enforcement. *See Ex parte Pruitt*, 551 S.W. 2d 706 (Tex. 1977). One of the issues in that case was whether, pursuant to a subpoena, the fire marshal of Harris County had to produce records of his investigation of a fire. The court mentioned that under section 552.108 and article 1606, V.T.C.S., basic factual information pertaining to a fire must be produced, but information in an active arson file, such as the names and statements of witnesses, and the opinions and conclusions of the fire marshal's investigators', should remain undisclosed. The court concluded that "the better policy reason is to deny access to . . . materials if it will unduly interfere with law enforcement and crime prevention." *See Open Records Decision No. 371 (1983).*

In Open Records Decision 134 (1976), this office concluded that the state fire marshal had to release the following information in an investigative report concerning a specific fire:

[T]he name of the investigator(s), the name of the person requesting the investigation, the date of such request, the probable cause of the fire, the owner, occupant, location of the loss or incident, date and time of incident, weather conditions, structural information, name and address of insuring company, amount of insurance involved, name of agent, adjuster, extent of damage, whether there were any fatalities or injuries involved, whether legal action was taken, and the status of the case[,] . . . the dates of the investigation, the construction and condition of the property damaged.

The decision concluded that the following information could be withheld under section 552.108:

[T]he investigator's opinion and conclusions concerning probable motive for the fire, the names of possible suspects, [the possible motive for an incendiary fire, evidence found, names of witnesses, and summaries of their statements, and information concerning the description, background and possible location of any suspect].

We have considered the exception you claimed, specifically section 552.108, and have reviewed the documents at issue. We conclude that the commission may withhold all the requested information except the information ordinarily found on the first page of the offense report.<sup>1</sup>

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 should not be relied upon as a previous determination under section 552.301 regarding any other records.<sup>2</sup>

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<sup>1</sup>Because all the documents may be withheld, except the front page offense report information, we do not need at this time to consider your argument that the documents are excepted from disclosure under section 417.007(g) of the Government Code.

<sup>2</sup>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.

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

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive, flowing style.

Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/SAB/rho

Ref.: ID# 30051

Enclosures: Submitted documents

cc: Mr. Jim Bellamy  
Abercrombie, Simmons, & Gillette of Dallas, Inc.  
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Dallas, Texas 75220  
(w/o enclosures)