



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1995

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

OR95-308

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# 30999.

The Texas Commission on Fire Protection (the "commission") received a request for a Fire/Incident Report, TCFP# 957-018-10. You claim that the requested information is excepted from required public disclosure 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, any proper custodian of information which relates to the incident may invoke section 552.108. Open Records Decision Nos. 474 (1987), 372 (1983).

Certain factual information generally found on the front page of offense reports, however, is public even during an active investigation. *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) at 3-4 (listing factual information available to public).

You state that the investigation is currently active. Although you have released the first page of the report pursuant to the *Houston Chronicle Publishing Co.* case, this does not satisfy the commission's burden under *Houston Chronicle Publishing Co.* It is the type of information that is determinative, not the placement of the information in an offense report. See Open Records Decision No. 127 (1976) at 9 (listing type of information available in fire investigation report); see also Open Records Decision No. 371 (1983). Therefore, you must release the information that is listed as public in Open Records Decision Nos. 371 (1983) and 127 (1976) at 9. See Open Records Letter No. 95-270 (1995).

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

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/LBC/rho

Ref: ID# 30999

Enclosures: Submitted documents

cc: Mr. Warren Vasey
Claim Specialist
State Farm Fire and Casualty Company
Astrodome Service Center
2555 Holly Hall Road
Houston, Texas 77054
(w/o enclosures)