



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 24, 1995

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

OR95-690

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# 33571.

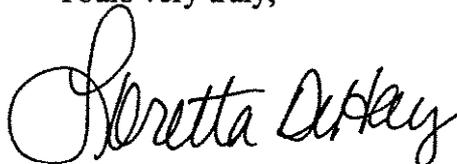
The Texas Commission on Fire Protection (the "commission") received a request for a copy of the fire investigation report regarding a church fire that occurred on April 13, 1995, at 4220 7th Street in Bay City. Additionally, the requestor seeks the dates of previous fires the property owner experienced and any related reports filed with the commission. Among the documents submitted for our review is a copy of a letter you sent to the requestor regarding his open records request. By that letter, dated May 8, 1995, you state that the report for the April 13, 1995, fire has not been completed and sent to your office as of the date of the open records request. We note that in the letter you inform the requestor that he "may wish to resubmit [the] request [regarding the April 13, 1995 fire] at a later date."

The act does not require a governmental body to make available nonexistent information, Open Records Decision No. 362 (1983) at 2, to prepare information in a form requested by a member of the public, Open Records Decision No. 467 (1987) at 2, or to perform research, Open Records Decision No. 563 (1990) at 8. Additionally, the act does not require a governmental body to inform a requestor if the requested information comes into existence after the request has been made. Open Records Decision No. 452 (1986). Since the report regarding the April 13, 1995, fire was not in existence at the time the commission received the request, the Open Records Act does not require the commission to disclose that report to the requestor.

You inform us that you have provided the requestor with a copy of the first page of the report titled Synopsis Investigation Report regarding a previous fire on November 4, 1991, involving the same property owner. You contend that some of the information requested is excepted from disclosure by section 552.108 of the Government Code. You have submitted for our review a copy of the report related to the fire on November 4, 1991.

You state that "the case file in question is an open and active investigation by the [commission]." We note that the Office of the Attorney General has recently issued Open Records Letter No. 95-642 (1995) a "previous determination" to the Texas Commission on Fire Protection pursuant to section 552.301 of the Government Code for records of active investigations the commission claims are excepted from disclosure under section 552.108. Accordingly, the commission may rely on the ruling in Open Records Letter No. 95-642 (1995) (copy enclosed) as a determination for this request for information. Please use the markings on the documents submitted with Open Records Letter No. 95-642 (1995) as a guide for releasing the information deemed open under *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). If you receive a new request for these records once the investigation is closed and you wish to withhold the records under section 552.108, you may not rely on Open Records Letter No. 95-642 (1995). In that case, you must request a ruling from this office to explain how release of the records would unduly interfere with law enforcement. See Open Records Decision No. 611 (1992) at 2.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LBC/rho

Ref: ID# 33571

Enclosures: Open Records Letter No. 95-642 (1995)
Submitted documents

cc: Mr. Michael Chaney
Director of Claims Investigations
Premier Claims Investigations, Inc.
P.O. Box 7567
The Woodlands, Texas 77387-7567
(w/o enclosures)