



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 3, 2003

Mr. Thomas F. Lay  
11550 Fuqua, Suite 490  
Houston, Texas 77034

OR2003-0052

Dear Mr. Lay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174463.

The City of South Houston (the "city"), which you represent, received a request for "[a]ll documents pertaining to 612 Palestin [sic]." You state that "[t]he only documents in [the] possession of the City, other than tax records, water records and records of other municipal services is a file in the Fire Marshal's office concerning a fire" at the specified location. You have not submitted the municipal service records for our review. We therefore assume that you have released this information. If you have not released it, you must do so at this time. See Gov't Code §§ 552.301(a), .302. You claim that the submitted records are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by noting that the submitted information contains court-filed documents, which are expressly public under section 552.022 of the Government Code and may not be withheld unless confidential under other law. See Gov't Code § 552.022(a)(17). Section 552.108 is a discretionary exception and is not "other law" for purposes of section 552.022. See Open Records Decision No. 177 (1977) (law enforcement exception may be waived by governmental body). Therefore, the court-filed documents, which we have marked, must be released pursuant to section 552.022(a)(17).

We now address your arguments under section 552.108 for the remaining information. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." For purposes of section 552.108, the arson investigation division of a fire department is considered a law enforcement unit. See Open Records Decision No. 127 (1976) (predecessor statute). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and

why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the fire marshal's investigation into this fire remains pending. Based on this representation, we conclude that the release of the remaining submitted information 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. *See* 531 S.W.2d at 186-87. Thus, the city must release the types of information that are considered to be front page information, even if this information is not actually located on the front page. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Although section 552.108(a)(1) authorizes you to withhold from disclosure the remaining information, the city may choose to release all or part of it that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, the marked, court-filed documents must be released in accordance with section 552.022(a)(17). The remaining submitted information may be withheld under section 552.108(a)(1), except for basic information, which must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

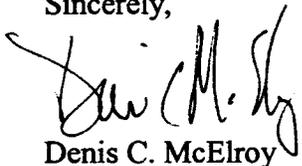
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 174463

Enc. Submitted documents

c: Mr. Billy C. Phillips  
P.O. Box 309  
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(w/o enclosures)