



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2011

Ms. Candice M. Gambrell
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-11015

Dear Ms. Gambrell:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 425380 (G.C. 18581).

The Houston Fire Department (the "department") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, the submitted documents indicate the submitted incident report and event history may have been previously released to the requestor because in the request letter, the requestor states he attached a copy of the incident report and event history previously obtained from the department. Section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Thus, pursuant to section 552.007, the department may not now withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 for the information at issue, this section is

a general exception to disclosure that does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, pursuant to section 552.007, if the department has previously released the incident report and event history, then the department may not now withhold this information under section 552.108. However, to the extent the department has not previously released the incident report and event history, we will address the department's arguments under section 552.108 for this information as well as the remaining submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note, 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 at 8 (1976). You state the submitted information relates to a pending criminal arson investigation. Based on this representation and our review, we conclude the release of the 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*); *see also* Open Records Decision No. 134 at 3 (1976) (summarizing types of information that must generally be released from fire marshal’s investigative reports). Accordingly, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, to the extent the incident report and event history have been previously released, they may not be withheld under section 552.108 and must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/tf

Ref: ID# 425380

Enc. Submitted documents

c: Requestor
(w/o enclosures)