



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1995

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

OR95-268

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# 32884.

The Texas Commission on Fire Protection (the "commission") received a request for a copy of the State Fire Marshal's report regarding a structure fire which occurred on June 23, 1994, at 6901 Blanco Road in San Antonio. You inform us that you have provided to the requestor information from the first page of the report titled Synopsis Investigation Report. You state that the case file in question is an open and active investigation. You contend that with the exception of the first page of the report and the top portion of page two, the information requested is excepted from disclosure by section 552.108 of the Government Code.

Section 552.108 provides that "[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from" disclosure. Section 552.108 applies to the records created by an agency whose primary function is to investigate crimes and enforce the criminal laws. Open Records Decision Nos. 493 (1988) at 2, 287 (1981) at 2. Section 552.108 excepts from required public disclosure all information related to cases under active investigation except certain basic information ordinarily appearing on the first page of an offense report. The press and public have a right to access certain information maintained by law enforcement agencies relating to crime and criminal activities which extends affirmatively to certain basic factual information contained in a police offense report. *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). We applied this principle to a state fire marshal's report in Open Records Decision No. 134 (1976).

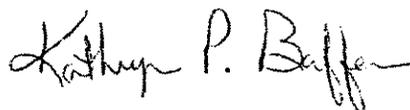
As a general rule, information which may be withheld includes portions of the report calling for the investigator's opinion and conclusions concerning probable motive for the fire, the names of possible suspects, and the names of witnesses. Open Records Decision No. 134 (1976).

The kinds of basic information not excepted from disclosure by section 552.108 include the following information about the fire: 1) the dates of the investigation, 2) the name of the investigator(s), 3) the cause of the fire, 4) the owner, 5) the occupant, 6) location of the loss or incident, 7) weather conditions, 8) structural information, 9) name and address of insuring company, 10) amount of insurance involved, 11) names of the insurance agent and the adjuster, 12) extent of damage, 13) whether there were any fatalities or injuries involved, 14) who discovered the fire, 15) who reported the fire; and 16) the status of the case. Open Records Decision No. 134 (1976).

Because the investigation of the fire is continuing, we conclude that such information as that listed in *Houston Chronicle Publishing Co.* and Open Records Decision No. 134 (1976), some of which is not listed on the first page or top portion of INV02 of the report but appears elsewhere in the report, is subject to disclosure. See Open Records Decision No. 394 (1983). The commission may withhold the remaining information in the report based on section 552.108.

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 may 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,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/KHG/rho

Ref.: ID# 32884

Enclosures: Submitted documents

cc: Mr. Jim Baggett
Baggett Claim Service
P.O. Box 690201
San Antonio, Texas 78269
(w/o enclosures)