



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 11, 1995

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

OR95-552

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 29543.

The Texas Commission on Fire Protection (the "commission") has received a request for information relating to a certain fire. Specifically, the requestor seeks "a copy of the fire report" involving the Catfish Junction Restaurant in Nacogdoches. You advise us that you have made the requested synopsis report available to the requestor. You object to releasing the requested fire report, however, and claim that sections 552.101 and 552.108 of the Government Code exempt it from required public disclosure.

Section 552.108 exempts from required public disclosure "[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" and "[a]n 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." When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 exempts from disclosure all information except that generally found on the first page of the offense report. *See generally 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). Otherwise, when this exception is claimed, the agency claiming it must

reasonably explain, if the information does not supply the explanation on its face, how its release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 2 (citing *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)); see also Open Records Decision No. 134 (1976) (excepting state fire marshal arson investigation under section 552.108). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. Open Records Decision No. 434 (1986) at 2.

The information submitted to us for review relates to a pending investigation conducted by the Office of the State Fire Marshal. You advise us, however, that the "Origin & Cause" Report was previously released to the public. Section 552.007 of the Government Code prohibits a governmental body from selectively disclosing information that is not confidential but that a governmental body may withhold under any of the Open Records Act's nonmandatory exceptions. See Open Records Decision No. 463 (1987) at 1-2. Section 552.007 provides as follows:

(a) This chapter does not prohibit a governmental body or its officer for public records from voluntarily making part or all of its records available to the public, unless the disclosure is expressly prohibited by law or the records are confidential under law.

(b) Records made available under Subsection (a) must be made available to any person.

Essentially, section 552.007 requires a governmental body to release information to all members of the public, notwithstanding the applicability of nonmandatory exceptions to required public disclosure, if the governmental body has previously released the same information to a member of the public.¹ For example, in Open Records Decision No. 400 (1983) at 2, this office declined to consider a governmental body's claim that section 3(a)(11) (now section 552.111 of the Government Code) authorized the governmental body to withhold a report from a requestor when the governmental body already had disclosed the report to a member of the public.

¹This office has held in numerous prior opinions that the Open Records Act deals primarily with the general public's access to information; it does not, as a general matter, give an individual a special right of access to information concerning that individual that is not otherwise public information. Open Records Decision No. 507 (1988) at 3; see also Attorney General Opinion JM-590 (1986) at 4; Open Records Decision No. 330 (1982) at 2. Indeed, the Open Records Act states in several provisions that public information is available to "the people," "the public," and "any person." See, e.g., Gov't Code §§ 552.001, .021(b), .221(a). Information that a governmental body collects, assembles, or maintains is, in general, either open to all members of the public or closed to all members of the public. Similarly, the Open Records Act prohibits a governmental body from inquiring into a requestor's reasons for requesting information; a governmental body must treat all requests for information uniformly. See Gov't Code §§ 552.222 (inquiries of requestor), 552.223 (uniform treatment of requests).

The prohibition against selective disclosure does not apply, however, if a governmental body releases confidential information to a member of the public.² See Open Records Decision No. 400 (1983) at 2. In addition, we note that while the Open Records Act prohibits selective disclosure to particular members of the public, a governmental body may have authority not based on the Open Records Act to disclose records to other persons and entities, and such disclosures are not voluntary disclosures to "the public" within section 552.007 of the Government Code. Open Records Decision No. 468 (1987) at 4. In such cases, the governmental body does not waive exceptions to disclosure by transferring or disclosing records. *Id.*

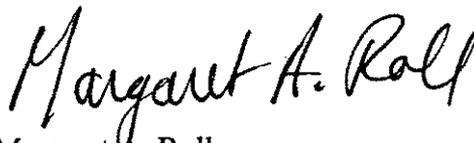
You appear to claim that the state fire marshal may elect to withhold the "Origin & Cause" report pursuant to section 417.007(g) of the Government Code, which provides that "[t]he state fire marshal may elect to withhold from the public any *testimony* taken in an investigation under this section." Gov't Code § 417.007(g) (emphasis added). Section 417.007 of the Government Code delegates to the state fire marshal certain law enforcement and investigative responsibilities. For example, section 417.007(c) requires the state fire marshal to conduct an investigation at certain fire sites, to "ascertain, if possible, whether the fire was caused intentionally, carelessly, or accidentally," and to "make a written report of the investigation to the commission." In addition, if further investigation is deemed necessary, "the state fire marshal shall take sworn statements from persons who in his opinion can supply relevant information and shall have the statements put in writing." *Id.* § 417.007(d).

We have examined the previously released "Origin & Cause" report. It does not contain the testimony of any witness examined under section 417.007(d) or pursuant to any other authority. Rather, it appears to be the written report required under section 417.007(c). Section 417.007(g) applies only to testimony. Therefore the Open Records Act, not section 417.007(g) of the Government Code, governs release of the "Origin & Cause" report. Because it has already been released to the public, the "Origin & Cause" report must be made available to the requestor here. See Gov't Code § 552.007. We conclude, however, that the remainder of the requested information, except for first page offense report information, may be withheld under section 552.108 of the Government Code.

²Moreover, several provisions of the Open Records Act, none of which are implicated in this instance, provide an individual with special rights of access to information, not available to members of the general public, concerning that individual: sections 552.008, 552.023, 552.026, 552.102, and 552.114. Other specific statutes, such as the Medical Practice Act, V.T.C.S. art. 4495b, or the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, may also provide an individual with a special right of access to certain records.

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,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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Enclosures: Submitted documents

Ref.: ID# 29543

cc: Mr. O.M. Gray
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(w/o enclosures)