ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2005

Mr. Leslie J. A. Sachanowicz
Assistant Criminal District Attorney
Civil Section
300 Dolorosa, Suite 4049
San Antonio, Texas 78205

OR2005-10563

Dear Mr. Sachanowicz:

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# 236834.

The Bexar County Fire Marshal's Office (the "fire marshal") received a request for the fire report concerning a fire at a specified location. You claim that the requested 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.

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." Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to the fire marshal's investigation of an alleged arson. *See* Open Records Decision No. 127 (1976) (providing that an arson investigation unit of a fire department is considered a law enforcement agency for purposes of section 552.108). However, you do not inform us, and it is not clear from the submitted information, that this investigation is still pending. Furthermore, you have not explained how or why release of this report would interfere with the investigation. Thus, because the fire marshal has not shown the applicability of section 552.108(a)(1), we conclude that it may not withhold the submitted information pursuant to this exception.

Section 552.108(b)(3) excepts from public disclosure a law enforcement agency's internal record that is prepared by a prosecutor in anticipation of criminal litigation or that reflects the mental impressions or legal reasoning of a prosecutor. Gov't Code § 552.108(b)(3). However, the fire marshal does not inform us that the submitted information was prepared by a prosecutor in anticipation of criminal litigation or that it reflects the mental impressions or legal reasoning of a prosecutor. Because the fire marshal failed to demonstrate the applicability of section 552.108(b)(3), the fire marshal may not withhold the information under this provision. Furthermore, in *Curry*, the court held that a request for a district attorney's "entire file" necessarily reveals the attorney's mental impressions concerning the prosecution of the case. *Curry v. Walker*, 873 S.W.2d 379, 380 (Tex. 1994). Here, the request is not for a prosecutor's file. Thus, *Curry* is inapplicable.

We note that the submitted information contains a social security number. Section 552.147 of the Government Code[1] provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. The fire marshal must withhold the social security number, which we have marked, under section 552.147.[2] The remaining information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

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[1]Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

[2]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. 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,

Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/jpa

Ref: ID# 236834

Enc. Submitted documents

c: Ms. Rebecca A. Flores
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(w/o enclosures)