



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2006

Ms. Mary J. Ibarra
Assistant Criminal District Attorney
Bexar County District Attorney's Office - Civil Division
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR2006-07994

Dear Ms. Ibarra:

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# 254740.

The Bexar County Fire Marshal (the "fire marshal") received a request for "the Complete Detailed Investigat[ive] Report . . . for Case # 2006-033." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code and rule 192.3(f) of the Texas Rules of Civil Procedure.¹ We have considered your claims and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides that "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" may not be withheld from the public unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov't Code § 552.022(a)(1). The submitted information consists of a completed report made by the fire marshal, which is made expressly public by section 552.022 and must be released, unless it is excepted from

¹Although you also assert that the submitted information is excepted from disclosure under section 552.022 of the Government Code, we note that this section is not an exception to public disclosure. Rather, section 552.022 specifies 18 categories of information that must be released to the public, unless the information is expressly confidential under other law or, in the case of section 552.022(a)(1), is excepted from disclosure under section 552.108. See Gov't Code § 552.022(a).

disclosure under section 552.108 or confidential under other law.² You contend that the information at issue is excepted under rule 192.3(f) of the Texas Rules of Civil Procedure as well as under section 552.101 of the Government Code. The Texas Supreme Court has held that the Texas Rules of Civil Procedure are “other law” within the meaning of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). Additionally, section 552.101 is “other law” for purposes of section 552.022. Therefore, we will address your arguments under rule 192.3 and section 552.101.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information protected by other statutes. Gov’t Code § 552.101. You claim that the requested information is confidential under section 352.018 of the Local Government Code. Section 352.018(b) provides that “[t]he result of an investigation by the county fire marshal of a fire may not be admitted in evidence in the trial of a civil action brought under the insurance policy.” Loc. Gov’t Code § 352.018(b). This office has determined that to fall within section 552.101, a statute must explicitly require confidentiality; confidentiality will not be inferred. *See* Open Records Decision No. 465 (1987). *See also* Open Records Decision Nos. 575 (1990), 574 (1990) (discovery privileges do not make information confidential for purposes of statutory predecessor to section 552.101). Section 352.018(b) does not make information expressly confidential, but is instead a discovery provision that regulates the availability of information in court proceedings and not under the Act. Section 552.101 does not encompass discovery privileges.³ *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 (1990). Accordingly, the fire marshal may not withhold any portion of the submitted information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 352.018(b).

You next contend that the submitted information is privileged under rule 192.3(f) of the Rules of Civil Procedure. Rule 192.3(f) provides as follows:

Except as otherwise provided by law, a party may obtain discovery of the existence and contents of any indemnity or insurance agreement under which any person may be liable to satisfy part or all of a judgment rendered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the indemnity or insurance agreement is not by reason of disclosure admissible in evidence at trial.

²You do not assert section 552.108 of the Government Code as an exception to disclosure of this information.

³The Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. Attorney General Opinion JM-1048 (1989); Gov’t Code § 552.006 (chapter 552 does not authorize withholding public information or limit availability of public information to the public except as expressly provided by chapter 552).

Civ. Proc. Rule 192.3(f) (emphasis added). You fail to explain, however, how rule 192.3(f), which pertains to the discovery of the existence and contents of certain indemnity or insurance agreements, applies to the investigation report at issue. We conclude, therefore, that the fire marshal may not withhold the submitted information pursuant to rule 192.3(f).

Finally, we note that some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Accordingly, the submitted information must be released, but any information protected by copyright must be released in accordance with copyright law.⁴

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

⁴We note that the information being released contains information that would be excepted from disclosure to the general public under laws and exceptions designed to protect privacy. However, in this instance, the requestor has a special right of access to this information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). If the fire marshal receives another request for this information from a person who would not have a special right of access, the fire marshal should resubmit this same information and request another decision. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/eb

Ref: ID# 254740

Enc. Submitted documents

c: Ms. Linda Hernandez
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(w/o enclosures)