



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 1, 2011

Mr. Frank Waite  
Assistant District Attorney  
Dallas County  
411 Elm Street, 5th Floor  
Dallas, Texas 75202

OR2011-01641

Dear Mr. Waite:

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# 408041.

The Dallas County Fire Marshall (the "fire marshal") received a request for the report prepared on a specified fire. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We note the requested report is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

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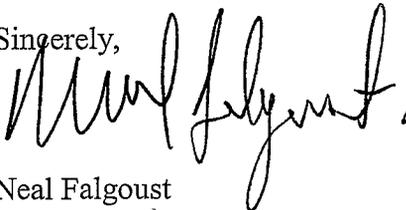
<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

Gov't Code § 552.022(a)(1). The requested report is expressly public under section 552.022(a)(1). Therefore, the fire marshal must release this report unless it is confidential under other law or excepted from disclosure under section 552.108. Although you claim the report is excepted from disclosure under section 552.103 of the Government Code, this section is a discretionary exception that a governmental body may waive. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information expressly confidential for purposes of section 552.022. Thus, the fire marshal may not withhold the requested report under section 552.103 of the Government Code. As you assert no other exceptions against disclosure, the requested report 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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/dls

Ref: ID# 408041

Enc. Submitted documents

c: Requestor  
(w/o enclosures)