



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 19, 2014

Ms. Nneka Kanu  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2014-23210

Dear Ms. Kanu:

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# 547503 (Houston GC No. 21791).

The Houston Fire Department (the "department") received a request for any department dispatch files, ground or tactical radio audio files, and surveillance video from a specified incident. You claim 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 representative sample of information.<sup>1</sup>

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2014-13232 (2014). In that ruling, we determined with the exception of basic information, the department may withhold information pertaining to a fire investigation under section 552.108(a)(1) of the Government Code. However, the department states a portion of the submitted dispatch audio was played by the chief of the department during a city council meeting. As to the information that was at issue in the previous ruling and has

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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 that submitted to this office.

not been released, there is no indication the law, facts, or circumstances on which the prior ruling was based have changed as to such recordings. Thus, with regard to the information that was at issue in the previous ruling and has not been released, the department may continue to rely on Open Records Letter No. 2014-13232 as a previous determination and withhold that information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, as to the dispatch audio files that were at issue in the previous ruling and have since been released, we find circumstances have changed as to such dispatch audio files and the department may not withhold such information in accordance with the previous ruling. *See id.* We note the Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Although you claim these dispatch audio files are excepted from disclosure under section 552.108 of the Government Code, we note section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision No. 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the department has waived the claim under section 552.108 and may not withhold the dispatch audio files that have been previously released on this basis. As no further exceptions to disclosure have been raised, to the extent the dispatch audio files were released to members of the public the department may not withhold this information under section 552.108 of the Government Code, and it must be released. We will address your section 552.108 claim for the remaining information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note, for purposes of section 552.108, the arson investigation division of a fire department is considered a law enforcement unit. *See* Open Records Decision No. 127 at 8 (1976). You state the requested information pertains to an open and active criminal investigation, and release of the information would interfere with the detection and investigation of a crime.

Based on your representation, we find the department has demonstrated the release of the remaining requested information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we find section 552.108(a)(1) is applicable to the remaining requested information. Accordingly, the department may withhold the remaining requested information under section 552.108(a)(1).

In summary, the department may continue to rely on Open Records Letter No. 2014-13232 as a previous determination and, in accordance with that ruling, withhold the information that was at issue in the previous ruling and has not been released. The department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rustam Abedinzadeh  
Assistant Attorney General  
Open Records Division

RA/dls

Ref: ID# 547503

Enc. Submitted documents

c: Requestor  
(w/o enclosures)