December 12, 2016

Mr. David Wheelus
Open Records Attorney
Office of Agency Counsel, Legal Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

Dear Mr. Wheelus:

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# 637292 (Ref. No. 176740).

The Texas Department of Insurance (the “department”) received a request for information pertaining to a specified incident at two specified addresses. You claim the submitted 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) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must 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). You state the submitted information relates to an ongoing criminal investigation conducted by the State Fire Marshal’s Office, which is a law enforcement unit within the department. Based upon this representation, we conclude the release of the submitted 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
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curiam, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic "front-page" information held to be public in Houston Chronicle. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

Finally, the department asks us to issue a previous determination permitting the department to withhold information relating to ongoing criminal investigations with the State Fire Marshal's Office pursuant to section 552.108(a)(1) of the Government Code without the necessity of requesting an attorney general opinion. See Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Houston Chronicle v. Mattox, 767 S.W.2d 695, 698 (Tex. 1989) (acknowledging this office has authority under section 552.301 of the Government Code to decide what constitutes a previous determination); Open Records Decision No. 673 (2001) (describing the two types of previous determinations). We note section 552.011 of the Government Code states "[t]he attorney general shall maintain uniformity in the application, operation, and interpretation" of the Act, chapter 552 of the Government Code. Gov't Code § 552.011. Pursuant to this legislative mandate, section 552.011 grants the attorney general the authority to "prepare, distribute, and publish any materials, including detailed and comprehensive written decisions and opinions, that relate to or are based on" the Act. Id. We further note the Act requires governmental bodies to promptly release public information requested under the Act within a reasonable time, without delay. Id. § 552.221(a); Open Records Decision No. 664 at 5 (2000).

With the foregoing in mind and upon due consideration, we issue this ruling, which constitutes a previous determination allowing the department to withhold information relating to ongoing criminal investigations with the State Fire Marshal's Office under section 552.108(a)(1) of the Government Code without the necessity of first requesting an attorney general decision, so long as the department has not previously received a request for the information from the same requestor in the manner described below. See ORD 673. This decision is intended to encourage the prompt release of requested public information by increasing the efficiency of the review process under the Act by clearly identifying information the department may withhold under the circumstances delineated below. See Gov't Code §§ 552.011, 221; Open Records Decision Nos. 684 (2009), 673.

Accordingly, the department may withhold certain information under section 552.108(a)(1) of the Government Code without the necessity of first requesting a ruling from this office in the following circumstances:
1. the department makes a good faith determination that the information at issue relates to the detection, investigation, or prosecution of crime, and the release of the information would interfere with the detection, investigation, or prosecution of an open or pending criminal matter;

2. the department will release at least the basic information about an arrested person, an arrest, or a crime (the “releasable information”) from the requested information;

3. the department will produce the releasable information to the requestor pursuant to the requirements of the Act within five business days after the date the request for information was received;

4. the department will provide the requestor with the notice included in Appendix A of this ruling when the department responds to the request pursuant to the requirements of this previous determination; and

5. the department has not previously received a request for the same information from the same requestor after the department has provided the requestor with the releasable information.

See Gov’t Code § 552.011. If any of the above circumstances change—or any other law, facts, or circumstances involving the requestor or the status of the requested information changes—the department may not rely upon this ruling as a previous determination to withhold the information at issue. See ORD 673 at 7. Additionally, the department may not rely on this previous determination in response to requests in which basic information is not responsive. For example, no basic information is at issue in a request for only a dashboard camera video recording or 9-1-1 call audio recording. Thus, the department may not rely upon this previous determination in response to those types of requests. Furthermore, this previous determination does not apply to situations in which other law may require some or all of the information at issue to be disclosed. See, e.g., Crim. Proc. Code arts. 2.139 (detailing right of access to videos made in connection with various types of driving while intoxicated offenses), 2.29 (detailing right of access to written report to law enforcement agency of alleged violation of Penal Code section 32.51); Gov’t Code §§ 411.081-.1410 (detailing rights of access to criminal history record information), 560.002(1)(A) (detailing rights of access to fingerprints and other biometric identifiers); Transp. Code §§ 550.065 (detailing rights of access to crash report forms), 724.018 (detailing right of access to blood or breath specimen analysis results). We also note this previous determination does not permit the disclosure of basic information in those instances in which the entirety of the information at issue must be withheld. See, e.g., Fam. Code §§ 58.007 (detailing circumstances under which certain information related to juvenile offenders must be withheld in its entirety), 261.201 (detailing circumstances under which certain information related to investigations of child abuse or neglect must be withheld in its entirety); Open Records Decision No. 393 (1983) (stating, because the identifying information of a sexual assault
victim was inextricably intertwined with other releasable information, the governmental body
was required to withhold the information in its entirety). We further note this previous
determination does not permit the department to withhold citations; DIC-24 statutory
warnings; DIC-25 notices of suspension; criminal trespass warnings; notices of code
violations; triplicate forms; or information subject to section 552.007 or section 552.022 of
the Government Code, other than information subject to section 552.022(a)(1). See Gov’t
Code §§ 552.007, .022(a)(1)-(18), .108(a)(1). However, the use of this previous
determination does not preclude the department from withholding information pursuant to
other statutory authority or previous determinations that apply to the department. See, e.g.,
id. §§ 552.1175(f), .130(c), .136(c), .147(b); ORD 684.

If the department’s use of this previous determination does not fall within all of the
circumstances delineated above, the requirements of the Act apply, including section 552.301
of the Government Code, and deadlines under the Act run from the date the department
received the initial written request for information. See Gov’t Code § 552.301(a);
Mattox, 767 S.W.2d at 698. Consequently, misapplication of this previous determination
may result in the presumption the requested information is public. See Gov’t Code
§ 552.302. Thus, if the department is unsure as to the applicability of this previous
determination to information responsive to a request for information, the department should
request a ruling from this office. Additionally, this office may modify or withdraw this
previous determination for any reason, including, but not limited to, misapplication of this
previous determination. See id. § 552.011; Mattox, 767 S.W.2d at 698; see also Open
Records Decision Nos. 485 at 3 (1987), 673 at 5. Finally, if the department later requests a
ruling from this office in response to a second request for the same information from the
same requestor, the department should notify this office it relied upon this previous
determination in its response to the initial request.

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/
orruing 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw
Ref: ID# 637292

Enc. Submitted documents

c: Requestor
   (w/o enclosures)