



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 14, 2020

Mr. Andrew Wipke
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2020-17369

Dear Mr. Wipke:

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# 836565.

The Fort Bend County Fire Marshal (the "fire marshal's office") received a request for information pertaining to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses chapter 352 of the Local Government Code. Subchapter B of chapter 352 pertains to the powers and duties of county fire marshals. The subchapter provides the marshal shall investigate the cause, origin, and circumstances of fires that destroy property within the marshal's jurisdiction. Local Gov't Code § 352.013. In certain cases, such as where arson is suspected, the marshal may determine that further investigation is necessary and, in such cases, is granted subpoena powers and the authority to administer oaths and gather and preserve evidence. *Id.* § 352.015.

¹ 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 that those records contain substantially different types of information than that submitted to this office.

You assert the submitted information is protected from disclosure under section 352.017 of the Local Government Code. Section 352.017, in relevant part, provides:

(a) In a proceeding under this subchapter, the county fire marshal may:

- (1) conduct an investigation or examination in private;
- (2) exclude a person who is not under examination; and
- (3) separate witnesses from each other until each witness is examined.

Id. § 352.017(a). You argue, relying on *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977), the submitted information is protected from disclosure under subchapter B of chapter 352. In *Pruitt*, the Texas Supreme Court interpreted the statutory predecessor to subchapter B of Chapter 352 of the Local Government Code. The court concluded the purpose of the statute was to preclude interference with the fire marshal's law enforcement duties with respect to active investigatory records of the county fire marshal. *Id.* at 710. You state the arson investigation of the fire marshal's office is ongoing and release of the submitted information would interfere with the investigation. Accordingly, based upon your arguments and our review, we conclude the fire marshal's office may withhold the submitted information at issue under section 552.101 of the Government Code in conjunction with the holding in *Pruitt* interpreting section 352.017(a) of the Local Government Code.²

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Michelle Garza
Assistant Attorney General
Open Records Division

MG/rm

² As our ruling is dispositive, we need not address your remaining arguments against disclosure. Additionally, as we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

Mr. Andrew Wipke - Page 3

Ref: ID# 836565

Enc. Submitted documents

c: Requestor
(w/o enclosures)