



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 18, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR98-1957

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117551.

The City of Houston (the "city") received an open records request for the city police department records pertaining to an alleged sexual assault. You have submitted to this office as responsive to the request the offense report pertaining to the alleged assault¹ and contend that, except for the categories of information specifically made public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the requested information is excepted from required public disclosure pursuant to section 552.108 of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." You inform us that the criminal prosecution for this offense has been dismissed. We therefore conclude that you have met

¹The request specifically seeks the records of an internal affairs investigation and certain tape recordings. You inform us that no internal affairs investigation ever took place in connection with this offense and that the district clerk has retained the only copies of the requested tape recordings. The city therefore need not comply with these aspects of the request. *See* Open Records Decision No. 445 (1986) (governmental body not required to obtain information not in its possession in response to open records request).

your burden of establishing the applicability of section 552.108(a)(2) and that the information therefore may be withheld.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/ch

Ref: ID# 117551

Enclosures: Submitted documents

cc: Mr. Jared Woodfill
Frank, Woodfill, Lucas & Pressler
1003 Wirt Road, Suite 311
Houston, Texas 77055
(w/o enclosures)

²We note, however, that the city has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007. In this regard we note that because the requestor is acting on behalf of the victim of the alleged assault, none of the information at issue could be withheld on privacy grounds. See Gov't Code § 552.023.