



April 19, 1999

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

OR99-1050

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# 123441.

The City of Houston (the "city") received a request for the case file on the murder investigation of Gary Graham. You indicate that you will release certain documents, which have previously been made public, and that you wish to withhold the remaining requested information. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the release of criminal history record information ("CHRI") maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or

nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Similarly, the city’s compilation of an individual’s criminal history is also protected from disclosure under section 552.101. Section 552.101 encompasses an individual’s constitutional and common-law privacy rights. Where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We therefore conclude that under section 552.101 of the Government Code the city must withhold from required public disclosure all criminal history information gathered by the city. *See id.*

You also contend that the submitted documents are exempt from disclosure under section 552.103 of the Government Code. When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.¹ Thus, under section 552.103(a) a governmental body’s burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.–Austin 1997, no pet.); Open Records Decision No. 551 at 4 (1990).

You represent that the case against Gary Graham is currently in federal post-conviction habeas litigation. You provide to this office the affidavit of Joni M. Vollman, an assistant district attorney for Harris County, that “all information in the possession of the Houston Police Department that has not previously been released to the public should be withheld from disclosure under the Texas Public Information Act pending the court’s determination of the defendant’s habeas appeal.” The responsive information submitted by you and marked

¹Section 552.103(a) exempts from required public disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Exhibit 2 is related to pending litigation against the state. *See* Open Records Decision 469 at 2 (1987). You may withhold the documents in Exhibit 2 pursuant to section 552.103(a) of the Government Code. In reaching this conclusion, however, we assume that the opposing party in the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a).

You also argue that the information in Exhibit 2A is exempt from disclosure pursuant to section 552.108(a)(2). You represent that Exhibit 2A relates to an investigated incident that occurred in 1991 and the investigation did not result in conviction or deferred adjudication.² Section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The city must release the types of basic information described 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). *See also* Open Records Decision Nos. 597 (1991) (basic information in an offense report generally may not be withheld under section 552.103); 127 (1976). The city may withhold the remainder of the information in Exhibit 2A from disclosure under section 552.108(a)(2) of the Government Code.

Having ruled on all of the requested information, we need not address the additional exception to disclosure under section 552.108(a) of the Government Code that you raise for Exhibit 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

²Section 552.108 of the Government Code, as amended by the Seventy-fifth Legislature, excepts from required public disclosure

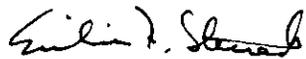
(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: . . .

(2) 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; . . .

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

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.

Sincerely,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 123441

Encl: Submitted documents

cc: Mr. Armando Villafranca
The Houston Chronicle
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(w/o enclosures)