



February 25, 2000

Mr. Monty Wade Sullivan
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-0710

Dear Mr. Sullivan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133798.

The City of Houston (the "city") received a request for all documents related to all bias complaints that the mayor's hate crimes coordinator's office has determined to be bias motivated crimes. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted sample of information.¹

You assert that Exhibit 2(c) is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.² In this case, the

¹We assume that 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.

²Section 552.101 states "Information is excepted [from public disclosure] if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

requested information involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, we find that Exhibit 2(c) is confidential pursuant to section 58.007(c) of the Family Code. You must withhold Exhibit 2(c) from disclosure under section 552.101 of the Government Code.³

You also assert that Exhibits 2(a) and 2(b) are excepted from disclosure under section 552.108 of the Government Code. Section 552.108, the "law enforcement exception," provides:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [public disclosure] if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (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; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You inform our office that Exhibit 2(a) consists of an offense report concerning an investigation that is currently open and under investigation. Because the investigation is currently pending, we agree that the release of Exhibit 2(a) would interfere with the detection, investigation, or prosecution of crime, and, therefore, you may withhold Exhibit 2(a) under section 552.108(a)(1). *See Houston Chronicle Publ'g Co. 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) (court delineates law enforcement interests that are present in active cases). On the other hand, the submitted documents indicate that Exhibit 2(b) consists of an offense report concerning a case that was made inactive due to a lack of prosecution on the part of the complainant. Because the investigation has been completed and did not result in conviction or deferred adjudication, we find that you may withhold Exhibit 2(b) under section 552.108(a)(2). Section 552.108, however, does not apply to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information is considered to be information held as public in *Houston Chronicle Publishing Co. v. City of Houston*. *See* Open Records Decision No. 127 (1976). Thus, you must release the basic front page offense and arrest information in Exhibits 2(a) and 2(b). We note that you have the discretion to release all or part of the remaining information in Exhibits 2(a) and 2(b) that is not otherwise confidential by law. Gov't Code § 552.007. You may withhold the submitted information except for basic information in Exhibits 2(a) and 2(b).

This letter ruling is limited to the particular records 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 records or any other circumstances.

³Because we find that Exhibit 2(c) is confidential pursuant to section 58.007 of the Family Code in conjunction with section 552.101 of the Government Code, we do not address your argument for exception under 552.108.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Don Ballard
Assistant Attorney General
Deputy Chief, Open Records Division

JDB/KSK/ljp

Ref: ID# 133798

Encl. Submitted documents

cc: Mr. Jim Simmon
5826 Jason
Houston, Texas 77074
(w/o enclosures)