



March 28, 2000

Mr. Lamis A. Safa
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-1201

Dear Mr. Safa:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 133431.

The Houston Police Department (the “department”) received a request for twenty-nine specified offense reports. You state that four of the requested reports have been released to the requestor. You have submitted the other responsive reports for our review. You claim that the submitted reports contain information that is excepted from public 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 information you submitted.¹

You claim that the reports submitted as Exhibits 2 and 3(b) are excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) provides that “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). You inform this office that most of the cases described in the reports contained in Exhibit 2 remain open, that the applicable statutes of limitations have not expired, and that the department intends to further investigate inactive cases when new information or evidence becomes available. You state that the report marked as Exhibit 3(b) concerns a case that was designated for further investigation.

¹We note the requestor’s letter to this office, regarding the timeliness of the department’s request for a decision, and your response. We agree that the department’s request for decision and brief were timely submitted. See Gov’t Code § 552.301(d), (e).

Based on your representations and our review of the reports in Exhibits 2 and 3(b), we conclude that they are excepted from public disclosure under section 552.108(a)(1).

You claim that the reports contained in Exhibits 3(a), 3(c), 3(d) and 3(e) are excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) provides that “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] 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[.]” Gov’t Code § 552.108(a)(2). You inform this office that the report in Exhibit 3(a) involves a case that was not prosecuted. You advise us that the reports in Exhibit 3(c) involve cases that were closed by the department because of lack of prosecution by the complainant. You state that the reports in Exhibit 3(d) relate to cases in which the complainants’ allegations were determined to be unfounded. You state that the report in Exhibit 3(e) relates to a case that was dismissed after the suspect was arrested and charged. Based on your representations and our review of the reports in Exhibits 3(a), (c), (d), and (e), we conclude that they are excepted from disclosure under section 552.108(a)(2) of the Government Code.

As to all of the reports that we have held to be excepted from disclosure under section 552.108(a), we note that section 552.108(c) requires the disclosure of “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” offense and arrest report information held to be public in *Houston Chronicle Publishing 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); *see also* Open Records Decision No. 127 (1976). Therefore, as to each submitted report that is excepted from disclosure under section 552.108(a), the department must release basic front-page information, even if it does not literally appear on the front page of the corresponding report.

You also claim that one of the submitted offense reports contains information about a juvenile offender that is confidential under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory or by judicial decision. Thus, section 552.101 protects information that is made confidential by a statute. With regard to juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, section 58.007 of the Family Code provides in relevant part:

(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.

Fam. Code § 58.007(c). We agree that one of the submitted reports represents a juvenile law enforcement record relating to conduct that occurred on or after September 1, 1997. As none of the exceptions in section 58.007 appears to be applicable to that report, it is confidential under section 552.101 in conjunction with section 58.007(c) of the Family Code. Therefore, the department must withhold in its entirety that report, which we have marked, from public disclosure.

In summary, all but one of the submitted offense reports are excepted from disclosure pursuant to section 552.108(a) of the Government Code. To the extent that each of those reports contains basic front-page offense and arrest report information, it must be released pursuant to section 552.108(c). The remaining offense report represents a juvenile law enforcement record that is confidential under section 552.101 of the Government Code and must be withheld from disclosure in its entirety. As we are able to make a determination under sections 552.108 and 552.101, we do not address your claim under section 552.130. 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.

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).

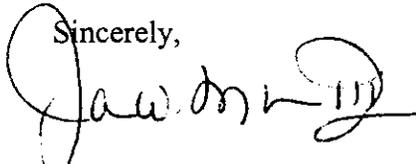
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/nc

Ref: ID# 133431

Encl. Submitted documents

cc: Mr. Randy Schaffer
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(w/o enclosures)