OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 2, 2000

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-3776

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139673.

The City of Houston Police Department (the "department") received a request for information pertaining to case number 13226299, involving a sexual assault. The requestor specifically seeks three categories of information relating to the complainant's identification of a named individual as her alleged assailant. You have submitted for our review information that is responsive to the request, consisting of an offense report and an affidavit with supporting documentation. You assert that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code, in pertinent part, states that information 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 state that the case "remains open and inactive pending the development of additional information." Based on this representation, and because the statute of limitations has not expired for the crime alleged, we conclude that the release of the information at this time "would interfere with the detection, investigation, or prosecution of crime." *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); Open Records Decision No. 216 (1978). Thus, you may withhold the information under section 552.108(a)(1).

However, we note that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. Such basic information includes the identification and description of the complainant. *See* Open Records Decision No. 127 (1976) (summarizing the types of information held to be public in *Houston Chonicle*). However, this office has found that information tending to identify a sexual assault victim is private information that must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy. *See* Gov't Code § 552.101 (excepting information made confidential by judicial decision); *see also Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied,* 430 U.S. 931 (1977); Open Records Decision No. 393 (1983). In this instance, we therefore conclude that the department must withhold any information that would identify the victim, but must release to the requestor the remaining basic information. *See, e.g.,* Open Records Decision No. 339 at 3 (1982).

In summary, the department may withhold the requested information under section 552.108 of the Government Code, but basic information about an arrested person, an arrest, or a crime (including the identification and description of the complainant) is not excepted from disclosure by this provision. However, because the case at issue involves an incident of sexual assault, the department must withhold any information that would identify the victim, pursuant to section 552.101 of the Government Code. The remaining basic information that is responsive to the request must be released to the requestor.

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;

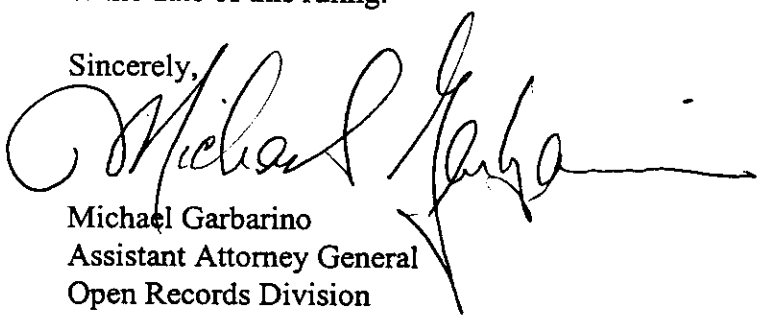
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 139673

Encl. Submitted documents

cc: Mr. Howard R. King
909 Fannin 2380 Two Houston Center
Houston, Texas 77010
(w/o enclosures)