



October 23, 2000

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

OR2000-4108

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# 140506.

The City of Houston (the "city") received requests for any and all correspondence between a named individual and anyone in your office advising her in her capacity as a city employee regarding a particular incident. You also received a third request for a copy of the OAG file #99-143. You state that the second request asks for documents inclusive of information of the first request and that the third request also asks for the same information. You state that the information you submitted to this office for a decision is responsive to all three requests. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107(1), and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, Exhibits 3 and 3A.

Initially, we note that Exhibit 3 contains information that falls within the purview of section 552.022. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;[and]

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by governmental body, on completion of the estimate.

Gov't Code 522.022(a)(2), (3), & (5). You have not indicated, nor are we aware of, any other law that would make this information confidential. Therefore, the information is not excepted from public disclosure under section 552.101. Further, sections 552.107, and 552.108 of the Government Code are discretionary exceptions under the Public Information Act (the "Act") and do not constitute "other law" for purposes of section 552.022(a)(2), (3), and (5).¹ Accordingly, the city must release the information we have marked in Exhibit 3 under section 552.022(a)(2), (3), and (5).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You state that following an investigation this matter at issue was referred to the county's district attorney's office for criminal charges. You state that certain individuals were indicted. You also state and provide documentation indicating that the charges were formally dismissed by court order on August 4, 2000. After reviewing your assertions and the submitted information, we find that the information does concern an investigation that concluded in a result other than conviction or deferred adjudication. Therefore, section 552.108(a)(2) is applicable to the submitted information. Consequently, the city may withhold from public disclosure pursuant to section 552.108(a)(2) the remainder of Exhibit 3 and Exhibit 3A in its entirety.

In summary, the county must release the information we have marked in Exhibit 3 under section 552.022. The city may withhold the remainder of Exhibit 3 and the entirety of

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

Exhibit 3A pursuant to section 552.108(a)(2). As we are able to make a determination under section 552.108(a)(2), we need not address the other exceptions you have claimed.

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).

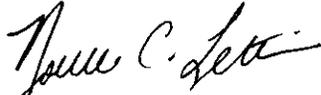
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 140506

Encl. Submitted documents

cc: Mr. Brent Fuller
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