



January 16, 2001

Ms. Jan Clark  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2001-0157

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143171.

The City of Houston (the "city") received a request for information related to police calls made to a specified location between November of 1996 and April of 1998. You indicate that you will release "the public release information page" of responsive offense reports. You have submitted responsive information labeled as exhibits 2 and 3. You claim that the information in exhibit 2 is excepted from disclosure by section 552.108 of the Government Code and that the information in exhibit 3 is excepted by section 552.101 of the Government Code in conjunction with the common law right of privacy. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Judicial decisions hold that information is protected by common law privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. Therefore, where a request seeks a compilation of an individual's law enforcement records, those records which indicate that the individual was

arrested or was a suspect are protected by the common law right of privacy. You argue that exhibit 3 is essentially an individual's criminal history. However, the request did not seek a compilation of an individual's history. Rather, it sought a compilation of reported activities at a specified location. Such a request does not implicate the common law rights of individuals. Therefore, information in exhibit 3 may not be withheld under section 552.101 of the Government Code in conjunction with the common law right of privacy.

Section 552.101 also encompasses information protected by other statutes. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

You argue that exhibit 2 is excepted from disclosure by section 552.108 of the Government Code. Section 552.108 (a)(2) excepts from public disclosure information held by a law enforcement agency or prosecutor 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. Unless information relating to a criminal investigation or prosecution *concluded* in a result other than a conviction or deferred adjudication, it may not be withheld under section 552.108(a)(2). You inform this office that no charges were filed and no arrests were made in the investigations related to the reports submitted as exhibit 2. We conclude the information in this exhibit is subject to section 552.108(a)(2) of the Government Code.

However, "basic" information about a crime or arrest is not excepted by section 552.108. Gov't Code § 552.108(c). We consider "basic information" to be the "front page information" made public by *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) (delineating types of information that must be released). Open Records Decision No. 127 (1976). Assuming that you have released all such "basic information," the submitted information in exhibit 2 may be withheld.

The submitted documents include information excepted under section 552.130 of the Government Code. This section governs the release and use of information obtained from motor vehicle records, and provides in relevant part as follows:

(a) Information is excepted from [required public disclosure]  
if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold Texas drivers' license numbers, VIN numbers, and the Texas license plate numbers pursuant to section 552.130. The submitted materials include Texas drivers' license numbers which must be withheld.

In conclusion, you must release "basic information" in exhibit 2 and may withhold the remaining information in this exhibit under section 552.108 of the Government Code. You must withhold social security numbers obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990, as well as Texas drivers' license numbers. The remaining information in exhibit 3 must be released.

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).

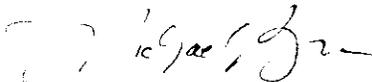
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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 Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 143171

Encl: Submitted documents

cc: Mr. Michael A. Logan  
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(w/o enclosures)