



May 21, 2001

Ms. Tracy B. Calabrese  
Senior Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2001-2095

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146833.

The City of Houston (the “city”) received a request on February 15, 2001 for “[a]ll first page offense reports generated from [Houston City Hall or annex] since January 1, 1999” and “all Inspector General reports submitted to the Mayor since January 1, 1998.” On February 20, 2001, the requestor narrowed the second part of his request to ask for “all completed investigations” by the Office of Inspector General (“OIG”), and further narrowed that request on March 18, 2001 by asking for “the synopsis of any completed [OIG] investigations” since January 1, 1998. You state that you will provide the requestor with access to synopses of completed investigations into administrative violations and with front-page offense report information for criminal investigations. You claim, however, that some of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy and under 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered the arguments

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<sup>1</sup>We 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.

and documentation submitted by the requestor. *See* Gov't Code § 552.304 (allowing a person to submit written comments stating reasons why particular information should or should not be released).

Pursuant to section 552.303(c) of the Government Code, this office sent a notice to you by facsimile dated May 7, 2001, indicating that additional information was required. Specifically, we asked you: "This office has received several letters from [a named individual] stating that investigations conducted by the city's Office of Inspector General ("OIG") are not criminal investigations. Please explain the role and responsibilities of the OIG." We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue was presumed public.

You responded to our request for addition information with a letter on May 11, 2001. In that letter, you explain that "the OIG investigates allegations of employee misconduct, both criminal and administrative." You also state that "a great deal of the work of [OIG] units is to investigate allegations of criminal wrongdoing." You also provided this office with the OIG's 2000 Annual Report, which gives a profile of criminal misconduct complaints and details the various types of crimes that were investigated in 2000 by the OIG and the city's Criminal Investigations Unit. Based on the information provided, we conclude that the OIG conducts criminal investigations. Therefore, we will address your 552.108 arguments.

You claim that some of the requested information is protected from disclosure under section 552.108(a)(2). Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Here, you assert that some of the requested information, which you have submitted as Exhibits 5 - 10, pertains to investigations of criminal conduct that concluded in a result other than conviction or deferred adjudication. Based on your representation and the additional information that you submitted to this office, we conclude that you may withhold the submitted criminal investigation reports under section 552.108(a)(2), subject to the following exception.

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 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). In Open Records Decision No. 127 (1976), this office listed the types of information that the Texas Supreme Court declared to be available to the public in

*Houston Chronicle*, which includes a detailed description of the offense.<sup>2</sup> We note that you have the discretion to release all or part of the remaining information in Exhibits 5 - 10 that is not otherwise confidential by law. Gov't Code § 552.007.

Next, you claim that some of the requested information is protected under section 552.101 in conjunction with common law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The common law right of privacy is incorporated into the Public Information Act by section 552.101. For information to be protected by common law privacy it must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that information is excepted from disclosure 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. 540 S.W.2d at 685.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

Here, you wish to withhold the identities of the victim and witnesses from the synopses of all sexual harassment investigations that are responsive to the request. You have submitted a representative sample of those synopses as Exhibit 4. We agree that you must release the synopses but withhold the identifying information of the victims and witnesses, which you have marked, under common law privacy. *Ellen*, 840 S.W.2d at 525.

To summarize: You may withhold the submitted criminal investigations, which you have marked as Exhibits 5 - 10, under section 552.108(a)(2). However, basic information about the crimes alleged in those reports must be released to the requestor. You may also withhold the identities of the victims and witnesses in Exhibit 4 under section 552.101 in conjunction with common law privacy.

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<sup>2</sup>We have attached the list of basic information from Open Records Decision No. 127 (1976) for your reference.

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,



Stephen P. Agan  
Assistant Attorney General  
Open Records Division

SPA/seg

Ref: ID# 146833

Encl. Submitted documents

cc: Mr. Wayne Dolcefino  
KTRK-TV  
3310 Bissonnet  
Houston, Texas 77005  
(w/o enclosures)

**SUMMARY OF OPEN RECORDS DECISION NO. 127 (1976)**

**I. TYPES OF INFORMATION AVAILABLE TO THE PUBLIC**

1. Arrestee's social security number, name, aliases, race, sex, age, occupation, address, police department identification number, and physical condition
2. Offense for which suspect arrested
3. Identification and description of complainant
4. Location of crime
5. Time of occurrence
6. Vehicle involved
7. Property involved
8. Detailed description of offense
9. Names of arresting officers
10. Date and time of arrest
11. Place of arrest
12. Details of arrest
13. Description of weather
14. Booking information
15. Court in which charge is filed
16. Notation of any release or transfer
17. Bonding information
18. Numbers for statistical purposes relating to modus operandi of those apprehended

**II. TYPES OF INFORMATION PROTECTED BY SECTION 552.108**

1. Identification and description of witnesses
2. Synopsis of confession
3. Officer's speculation as to suspect's guilt
4. Officer's view of witness credibility
5. Statements by informants
6. Ballistics reports
7. Fingerprint comparisons
8. Blood and other lab tests
9. Results of polygraph test
10. Refusal to take polygraph test
11. Paraffin test results
12. Spectrographic or other investigative reports
13. Personal History and Arrest Record, including
  - A. Identifying numbers (such as TDC numbers)
  - B. Physical description with emphasis on scars and tattoos
  - C. Marital status and relatives
  - D. Mugshots, palm prints, fingerprints, and signature
  - E. Chronological history of any arrests and disposition

*See Open Records Decision No. 127 (1976).*