OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

June 29, 2001

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-2799

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148916.

The City of Houston (the "city") received a request for a copy of incident report #117320699D. You state that you will release the "Public Release Information"portion of this report. *See* Gov't Code § 552.108(c) (stating that basic information about arrested person, arrest, or crime is not excepted by Gov't Code § 552.108); *see also 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). However, you claim that the remaining portions of the report are excepted from disclosure under section 552.108(a)(2) of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.108(a)(2) of the Government Code provides in pertinent part:

> (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if:
>
> . . . .

> (2) 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) (emphasis added). Generally, a governmental body claiming section 552.108(a)(2) of the Government Code as an exception to disclosure must demonstrate that the information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the Houston Police Department advises that the investigation into this case "is cleared." You also state that the investigation "has not resulted in conviction or deferred adjudication." Based on your representations and our review of the submitted information, we find that you have not established that this case concluded in a final result other than conviction or deferred adjudication Accordingly, the remaining portions of the report are not excepted from disclosure under section 552.108(a)(2) of the Government Code and must, therefore, 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).

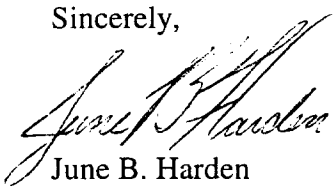
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RJB/seg

Ref: ID# 148916

Enc: Submitted documents

c: Mr. Howard J. Komish
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Chicago, Illinois 60601
(w/o enclosures)