



October 15, 2001

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

OR2001-4657

Dear Mr. Oommen:

You have asked whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 155088.

The Houston Police Department (the "department") received a request for offense report numbers 002693498, 007882698, 032060298, 072308698, 057803398, 062322698, 067403798, 095147098 and 107390498. You advise that you have no responsive incident report numbers 002693498, 007882698 and 032060298. You assert that the information contained in the remaining offense reports, which you have submitted as Exhibits 2, 3, 4, 5, 6 and 7, is excepted from public disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201 (a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the requested report you have included under Exhibit 2 relates to an allegation of child abuse investigated by the department, the documents are within the scope of section 261.201 of the Family Code. Accordingly, the requested report is made confidential by section 261.201 of the Family Code and must, therefore, be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 440 (1986) (applying former Fam. Code § 34.08). Because we are able to make a determination under section 261.201, we need not address your additional arguments against disclosure of the documents submitted as Exhibit 2.

Next, you assert that documents attached as Exhibit 3 are excepted from public disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007 (c) provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007 (c). The documents you attach as Exhibit 3 involves the alleged criminal conduct of a child occurring after September 1, 1997. Thus, these documents constitute law enforcement records concerning juvenile conduct that occurred after

September 1, 1997. Since it does not appear that any of the exceptions to section 58.007 apply, we conclude that the information submitted as Exhibit 3 must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

You claim that documents you have submitted as Exhibits 4, 5 and 7 are excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure "if 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). 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. You state that the department has discontinued the investigations due to the complainant's failure to pursue charges in the matter. Therefore, we understand that the investigations into this matter has concluded in final results other than conviction or deferred adjudication. Accordingly, we find that Exhibits 4, 5 and 7 may be withheld from disclosure pursuant to section 552.108(a)(2) of the Government Code.

You also assert that the requested information submitted as Exhibit 6 is excepted from disclosure pursuant to section 552.108(a)(1). Section 552.108 of the Government Code 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). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the requested information pertains to an "open investigation of attempted homicide" and that if the department receives additional leads or evidence, it will continue the investigation. We interpret your argument to be that the information relates to a pending investigation. We therefore agree that the department may withhold the information submitted as Exhibit 6 under section 552.108(a)(1) because release of the report "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).

However, 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*. Thus, with the exception of the basic front page offense and arrest report information, you may withhold the documents submitted

as Exhibits 4, 5 and 7 from disclosure based on section 552.108(a)(2), and you may withhold from disclosure the documents submitted as Exhibit 6 based on section 552.108(a)(1).

In light of our conclusions under sections 552.101 and 552.108, we need not address the other exception raised. 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 Dep't 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,



Gregory T. Simpson
Assistant Attorney General
Open Records Division

GTS/seg

Ref: ID# 155088

Encl. Submitted documents

cc: Ms. Tara Talbot
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(w/o enclosures)