



August 30, 2002

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77002

OR2002-4858

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167953.

The Houston Police Department (the “department”) received a request for several incident reports. You state that the department will release “front page” offense report information for all of the specified reports, as well as additional information relating to several of the responsive reports. You claim that the remaining responsive information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that Exhibits 3 and 5 concern allegations of child abuse. Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” which includes information made confidential 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.

Chapter 261 of the Family Code provides for the investigation of the abuse or neglect of a child. Exhibits 3 and 5 involve allegations of assault against an individual who was a child for purposes of chapter 261. *See* Fam. Code § 101.003(a) (“child” is generally defined as “a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes”). You have not cited any rule that the investigating agency has adopted that governs the release of this type of information. Therefore, we assume that no such regulation exists. We therefore conclude that the department must withhold Exhibits 3 and 5 in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.108 provides in relevant part:

(a) 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:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(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[.]

...

(c) This section does not except [from public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2), (c). A governmental body that raises section 552.108 must reasonably explain, if the responsive information does not supply an explanation on its face, how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(1) protects information that is shown to be related to a pending criminal investigation or prosecution. *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); Open Records Decision No. 216 at 3 (1978). Section 552.108(a)(2) is applicable only to a closed case that did not conclude in a conviction or a deferred adjudication.

You argue that the information in submitted Exhibits 2 and 6 is excepted from disclosure under section 552.108(a)(1) as it relates to open criminal investigations. You state although these cases are inactive, the statutes of limitations have not run, and that in the event that further leads are developed or additional evidence is obtained, the department may continue its investigations. Based upon these representations, we conclude that the release of the information in Exhibits 2 and 6 would interfere with the detection, investigation, or prosecution of crime, and therefore, these exhibits are excepted from disclosure under section 552.108(a)(1).

With regard to Exhibit 4, you state that because the complainants declined to pursue criminal charges, this investigation did not result in conviction or deferred adjudication. On this basis, we conclude that Exhibit 4 is excepted from disclosure under section 552.108(a)(2).

We note, however, that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87. The department must release basic front-page offense and arrest report information from Exhibits 2, 4, and 6, including a detailed description of the alleged offense, whether or not that information is actually located on the front page of the report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). As we are able to make these determinations, we need not address your argument under section 552.130.

To summarize, Exhibits 3 and 5 must be withheld in their entirety under section 552.101 in conjunction with section 261.201 of the Family Code. Exhibits 2, 4, and 6 may be withheld under section 552.108, with the exception of basic information, which must be released to the requestor.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 167953

Enc. Submitted documents

c: Mr. Godwin Umotong
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(w/o enclosures)