OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 28, 2003

Mr. Brad Norton
Assistant City Attorney
City of Austin
P. O. Box 1546
Austin, Texas 78767-1546

OR2003-1292

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177266.

The Austin Police Department (the "department") received a written request for all records pertaining to investigations or police calls made to a certain address. You have submitted to this office as being responsive to the request three incident reports, which you contend are excepted from required public disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

Because your section 552.108 claim is the more inclusive, we will address it first. Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because the release of such information presumptively 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). You state that case numbers 01-2450015 and 01-2951804 each pertain to pending criminal investigations. We therefore conclude that the department may withhold most of the information contained in case numbers 01-2450015 and 01-2951804 pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108 does not, however, except from required public disclosure "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*. Accordingly, the department must release these types of information from case numbers 01-2450015 and 01-2951804 in accordance with *Houston Chronicle*, with the following exception.

Some of the basic information from case number 01-2450015 implicates an individual's privacy interests. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information that relates to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has also determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982). Upon review, we agree that the information you have marked on the front page of case number 01-2450015 must be withheld from the requestor on privacy grounds, unless the department determines that the requestor has a special right of access to that information pursuant to section 552.023 of the Government Code. In addition, we have marked other basic information that the department must withhold on privacy grounds.

You next seek to withhold case number 96-1501464 pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency . . . 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." You inform us that case number 96-1501464 pertains to a criminal investigation that did not result in a conviction or deferred adjudication. After reviewing the information at issue, we conclude that the department may withhold most of case number 96-1501464 pursuant to section 552.108(a)(2) of the Government Code.

However, as noted above, section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Consequently, the department must release all basic information, including a detailed description of the alleged offenses, from case number 96-1501464 in accordance with *Houston Chronicle*.

In summary, the department may withhold pursuant to section 552.108(a)(1) most of the information contained in case numbers 01-2450015 and 01-2951804. The department may also withhold pursuant to section 552.108(a)(2) most of the information contained in case number 96-1501464. However, the department must release all "basic information" contained in these reports, except for the marked information in case number 01-2450015, which must be withheld from the requestor pursuant to common-law privacy unless the department determines that the requestor has a special right of access to the marked information pursuant to section 552.023.

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).

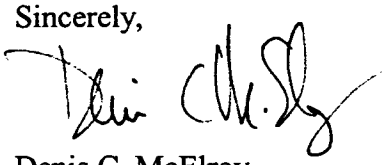
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/RWP/lmt

Ref: ID# 177266

Enc: Submitted documents

c: Mr. Malcolm Greenstein
1006 East Cesar Chavez Street
Austin, Texas 78702
(w/o enclosures)