OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 7, 2003

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

OR2003-2327

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# 178924.

The City of Houston (the "city") received a request for offense report 168494102N. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

At the outset, we note that the requestor states that the city has failed to submit to him a copy of its written communication requesting an attorney general decision, as required by section 552.301(d)(2) of the Government Code. Pursuant to section 552.302, a governmental body's failure to provide the requestor with a copy of its written communication to this office results in the presumption that the information is public. However, it appears from the written communication this office received from the city that the requestor is copied. Therefore, we find that the city complied with section 552.301(d). Accordingly, we will address your claim under section 552.108.

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). You inform us that the requested information pertains to a case that is "open and inactive pending additional leads" and that the statute of limitations has not run. You state that if the Houston Police Department receives additional leads or evidence, it will continue its investigation. We interpret your argument to be that the information relates to a pending investigation. We therefore conclude that the release of Exhibit 2 "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).

We note, however, that the requestor claims that as the victim of the crime, he has a special right of access to the information. Section 552.023 provides, in pertinent part:

> (a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.
>
> (b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter *but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.*

Gov't Code §552.023 (Emphasis added.). Section 552.108 is an exception to public disclosure designed to protect a governmental body's interest, not an individual's privacy interest. *See* Open Records Decision No. 470 at 2 (1987). Accordingly, we find that the requestor does not have a "special right of access" to the submitted information based on section 552.023.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd per curiam,* 536 S.W. 2d 559 (Tex. 1976). You indicate that the city will release a copy of the public information portion of the requested offense report. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information, including detailed description of offense). The remaining information, however, may be withheld under section 552.108. We note that the city has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

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,

Gregory T. Simpson
Assistant Attorney General
Open Records Division

GS/sdk

Ref: ID# 178924

Enc: Submitted documents

c: Mr. Adam Cline
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Houston, Texas 77060
(w/o enclosures)