



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

July 15, 2003

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2003-4908

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# 184165.

The Houston Police Department (the "department") received a request for information relating to offenses that occurred on Martin Luther King, Jr. Boulevard on specified dates from 1999 through 2003. You inform us that the department has no responsive information for October 26, 2000 or October 31, 2000 or a second incident report for May 7, 2000. We note that chapter 552 of the Government Code does not require the department to release information that did not exist when it received this request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). You also state that the department will release some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. The department claims that information contained in Exhibit 44 is confidential under section 261.201 of the Family Code. Chapter 261 of the Family Code is applicable to information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 provides in part:

- (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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that the information in Exhibit 44 consists of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). You do not inform this office of any rule adopted by the department that would allow the release of the information in question in this instance. We therefore assume that no such rule exists. Give that assumption, we conclude that Exhibit 44 is excepted from disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.

The department also contends that the information submitted as Exhibit 25 is confidential under section 58.007 of the Family Code. Section 58.007 provides in part:

(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). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We agree that Exhibit 25 is confidential in its entirety under section 58.007(c) of the Family Code. Therefore, the department also must withhold Exhibit 25 under section 552.101 of the Government Code as information made confidential by law.

Next, we address the department's claims under section 552.108 with regard to the rest of the submitted information. 552.108(a)(1) excepts from 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[.]" A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state that the information submitted as Exhibits 2-4, 7-10, 12, 14-16, 18, 19, 22-24, 26-31, 33-40, 42-43, 46-47, and 49-51 relates to inactive criminal investigations. You also inform us, however, that these exhibits relate to cases in which the statutes of limitations have not run and that the department's investigations may be reactivated once additional leads are developed. You assert that the release of the information that relates to these cases would interfere with the detection and investigation of crime. Based on your representations, we find that section 552.108(a)(1) is applicable to Exhibits 2-4, 7-10, 12, 14-16, 18-19, 22-24, 26-31, 33-40, 42-43, 46-47, and 49-51. 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).

Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . 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[.]" Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You inform us that the information submitted as Exhibits 5, 6, 11, 13, 17, 20, 21, 32, 41, 45, and 48 relates to criminal investigations that were discontinued by the department. You state that none of these investigations resulted in a conviction or a deferred adjudication. Based on your representations, we find that section 552.108(a)(2) is applicable to Exhibits 5, 6, 11, 13, 17, 20, 21, 32, 41, 45, and 48.

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 information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87. Basic information under section 552.108(c) includes the identity of the complainant and a detailed description of the offense. See Open Records Decision No. 127 at 3-4 (1976) (summarizing information deemed public by *Houston Chronicle*). We note, however, that the information in Exhibit 48 relates to an alleged sexual assault. The identity of a sexual assault victim is excepted from public disclosure under section 552.101 in conjunction with common-law

privacy.¹ See Gov't Code § 552.101; *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (identities of witnesses to and victims of sexual harassment were highly intimate or embarrassing information that was not matter of legitimate public interest); Open Records Decision Nos. 393 (1983), 339 (1982). Thus, the department must withhold the identity of the complainant in Exhibit 48 under section 552.101 in conjunction with common-law privacy. Otherwise, the department must release basic information with regard to Exhibits 2-24, 26-32, 33-43, and 45-51, even if that information does not literally appear on the front page of an offense or arrest report. The department may withhold the remaining information in Exhibits 2-24, 26-32, 33-43, and 45-51 under section 552.108(a)(1) and (a)(2).

In summary, the department must withhold Exhibit 44 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold Exhibit 25 under section 552.101 in conjunction with section 58.007 of the Family Code. The department may withhold Exhibits 2-4, 7-10, 12, 14-16, 18, 19, 22-24, 26-31, 33-40, 42-43, 46-47, and 49-51 under section 552.108(a)(1) and Exhibits 5, 6, 11, 13, 17, 20, 21, 32, 41, 45, and 48 under section 552.108(a)(2), with the exception of basic information. The department must release basic information with regard to Exhibits 2-24, 26-32, 33-43, and 45-51, except for the identity of the sexual assault complainant in Exhibit 48. The department must withhold the identity of the complainant in Exhibit 48 under section 552.101 in conjunction with common-law privacy. As we are able to make these determinations, we need not address section 552.130.

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

¹Section 552.101 also encompasses the common-law right to privacy. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

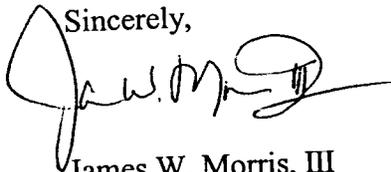
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/lmt

Ref: ID# 184165

Enc: Submitted documents

c: Ms. Jennifer Oliver
2214 Decatur, #1
Houston, Texas 77007
(w/o enclosures)