



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2004

Mr. Gary A. Scott  
Assistant City Attorney  
City of Conroe  
P. O. Box 3066  
Conroe, Texas 77305

OR2004-0072

Dear Mr. Scott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193793.

The City of Conroe (the "city") received a request for information pertaining to a specified case. You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) as an applicable exception to disclosure 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 case associated with the submitted information involves an "incident that has been concluded." You also state that the "conclusion was a result other than conviction or deferred adjudication." Thus, we understand from your representations that the case associated with the submitted information has concluded in a final result other than conviction or deferred adjudication. Accordingly, we find that section 552.108(a)(2) is applicable to the submitted information.

Section 552.108 does not, however, 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 Publishing 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). See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). However, in this case, some of the basic information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>1</sup> See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (concluding that, among other things, information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs is protected by common-law privacy). We have marked the portions of the submitted information that must not be released to the requestor as basic information pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. With the exception of the remaining basic information that must be released to the requestor, we conclude that the city may withhold the rest of the submitted information pursuant to section 552.108(a)(2) of the Government Code. We note, however, that the city maintains the discretion to release all or part of this particular information that is not otherwise confidential by law.<sup>2</sup> See 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

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. See Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

<sup>2</sup> Because we base our ruling on section 552.101 of the Government Code in conjunction with the common-law right to privacy and on section 552.108(a)(2) of the Government Code, we need not address your remaining arguments.

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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 193793

Enc. Marked documents

c: Ms. Vicki Christopher  
20 Village Hill Drive  
Conroe, Texas 77304  
(w/o enclosures)