



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 13, 2004

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2004-6878

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207203.

The Houston Police Department (the "department") received a request for a specified report. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the criminal investigation at issue is inactive pending additional leads and that the statute

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<sup>1</sup>The department failed to raise section 552.101 within the time prescribed by section 552.301. *See* Gov't Code § 552.301(b) (governmental body must ask for decision and state exceptions that apply within ten business days after receiving request for information). However, as section 552.101 is a mandatory exception to disclosure, we find that the department has not waived its arguments under this exception. *See* Gov't Code §§ 552.007, .302, .352; Open Records Decision Nos. 665 at 2 n.5 (2000), 150 (1977).

of limitations has not run. Additionally, you state that “the investigation may be reactivated once additional leads are developed.” Based upon these representations, we conclude that the release of the submitted information 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 basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You contend that portions of the basic information that must be released are excepted under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family member information of an employee of a governmental body, provided the employee elected to keep such information confidential pursuant to section 552.024 of the Government Code prior to the date the governmental body received a request for the information. We note, however, that the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. See Gov’t Code § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer); see also Gov’t Code § 552.024 (establishing election process for section 552.117). In this instance, the submitted information is held by the department as a law enforcement entity, not as an employer of the individuals at issue. Consequently, we find that the none of the basic information may be withheld under section 552.117(a)(1) of the Government Code. Thus, with the exception of the basic offense and arrest information that must be released, the department may withhold the submitted information based on section 552.108.<sup>2</sup> We note that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov’t Code § 552.007. As our ruling is dispositive, we need not address your remaining argument.

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

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<sup>2</sup>We note that basic information as described in *Houston Chronicle* does not include information covered by section 552.130.

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,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/jev

Ref: ID# 207203

Enc: Submitted documents

c: Ms. LaVinda Rachell Britton  
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(w/o enclosures)