



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2004

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 1526
Houston, Texas 77002

OR2004-8272

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# 209976.

The Houston Police Department (the "department") received a request for incident reports and purged call for service reports pertaining to five specified locations. You indicate that some information has been released to the requestor. You also state that some of the requested information does not exist. We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received.¹ You claim that the submitted 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 reviewed the submitted information.

You assert that Exhibit 2 is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes. Section 261.201(a) of the Family Code provides as follows:

¹*Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

(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, 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). Because Exhibit 2 constitutes a file, report, record, communication, or working paper used or developed in an investigation under chapter 261, it is within the scope of section 261.201 of the Family Code. You state that the department has not adopted a rule that governs the release of this type of information. Therefore, we find that Exhibit 2 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold Exhibit 2 under section 552.101 as information made confidential by law.

You assert that Exhibits 22 and 23 are excepted from disclosure under section 552.101 in conjunction with section 58.007 of the Family Code. Section 58.007 provides in pertinent part as follows:

(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). Upon review, we find that Exhibit 23 involves juvenile conduct that occurred after September 1, 1997, and identifies juvenile suspects. It does not appear that any of the exceptions in section 58.007 apply. Therefore, we determine that Exhibit 23 is

confidential pursuant to 58.007(c) of the Family Code and must be withheld under section 552.101. However, Exhibit 22 does not identify any particular juvenile as a criminal suspect. We therefore conclude that Exhibit 22 cannot be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

You assert that the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits 6, 7, 8, 9, 10, and 11 relate to criminal investigations that are “inactive pending additional leads” and that these investigations “may be reactivated once additional leads are developed.” Based on your representations and our review, we determine that the release of these exhibits 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). Thus, section 552.108(a)(1) is applicable to Exhibits 6, 7, 8, 9, 10, and 11.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) 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 assert that the remaining submitted information relates to investigations that did not result in conviction or deferred adjudication. You state that Exhibits 3, 4, and 5 pertain to investigations that were closed “due to the complainants’ failure to pursue charges.” You state that Exhibits 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 pertain to investigations that were closed “because there were no suspects or arrests.” You state that Exhibit 22 pertains to an investigation in which the department declined charges in order to charge the suspect in a different case. Based on your representations and our review of the information at issue, we agree that section 552.108(a)(2) is applicable to Exhibits 3, 4, 5, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22.

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*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, you may withhold Exhibits 3 through 22 from disclosure pursuant to section 552.108. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

In summary, the department must withhold Exhibit 2 under section 552.101 in conjunction with section 261.201 of the Family Code. The department must withhold Exhibit 23 under section 552.101 in conjunction with section 58.007 of the Family Code. With the exception of basic information, which must be released to the requestor, the department may withhold Exhibits 3 through 22 under section 552.108.²

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

²As our ruling is dispositive, we do not address your argument under section 552.130.

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,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 209976

Enc. Submitted documents

c: Mr. S. Robert Fling
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(w/o enclosures)