



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 7, 2005

Ms. Michele Austin  
Assistant City Attorney  
City of Houston - Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2005-08149

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 231599.

The Houston Police Department (the "department") received a request for information pertaining to a named individual, including six specified incidents. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.<sup>1</sup> To the extent additional responsive information existed on the date the department received the present request, we assume it has been released to the requestor. If the department has not released any such information, it must be released to the requestor at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the doctrine of common-law privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *U. S. Dep't of Justice v. Reporters*

---

<sup>1</sup>We note that, in your letter to this office dated June 29, 2005, you also claimed that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. Because you have not submitted arguments explaining how this exception is applicable, we assume you have withdrawn your claim that this section applies to any of the submitted information.

*Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, information that does not portray the individual as a suspect, defendant, or arrestee may not be withheld under section 552.101 on the basis of the holding in *Reporters Committee*.

In this instance, the requestor asks the department for “copies of any and all arrests and records” pertaining to a named individual and lists six specified incidents in which the named individual is involved. We note that when a requestor asks for information regarding a specified incident, the request does not implicate the privacy concerns expressed in *Reporters Committee*. Here, the information submitted as Exhibits 2, 4, 5, and 6 pertains to incidents that were specified by the requestor. As such, this information may not be withheld under section 552.101 on the basis of *Reporters*. However, the request, in part, also seeks unspecified information involving the named individual. We find that this portion of the request requires the department to compile the criminal history of the individual, and thus implicates the individual’s right to privacy as contemplated in *Reporters Committee*. As such, to the extent the department maintains records pertaining to incidents not specified by the requestor in which the named individual is portrayed as a suspect, defendant, or arrestee, it must withhold such information in accordance with section 552.101 and the common-law right to privacy.

Next, you claim that Exhibit 2 is excepted from required public disclosure pursuant to section 552.108(a)(2) of the Government Code. This section excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). 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 state that this information “pertains to a criminal investigation that did not result in conviction or deferred adjudication.” Based on your representations and our review, we agree that section 552.108(a)(2) is applicable to Exhibit 2.

However, 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). Basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). Thus, with the exception of the basic front page offense and arrest information, the department may withhold the information submitted as Exhibit 2 based on section 552.108(a)(2). Although section 552.108(a)(2) authorizes the withholding of this information, the department may choose to release all or part of this information that is not otherwise confidential by law. See Gov’t Code § 552.007.<sup>2</sup>

---

<sup>2</sup>Because we reach this conclusion under section 552.108 of the Government Code with respect to Exhibit 2, we need not address the applicability of section 552.130 of the Government Code to this information, except to note that basic information described in *Houston Chronicle* does not include information covered by section 552.130.

Next, we address your claim under section 552.130 of the Government Code with respect to Exhibits 4, 5, and 6. This section excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. As such, the department must withhold the Texas motor vehicle record information it has highlighted pursuant to section 552.130; we have also marked additional information in Exhibit 6 that must be withheld on this basis.

Lastly, we note that section 552.147 of the Government Code<sup>3</sup> provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the arrestee's social security number we have marked in Exhibits 2, 4, and 6 pursuant to section 552.147.<sup>4</sup>

To summarize: (1) pursuant to section 552.101 of the Government Code in conjunction with common-law privacy, the department must withhold the requested information to the extent it pertains to incidents not specified by the requestor that portray the named individual as a suspect, defendant, or arrestee; (2) with the exception of basic information, the department may withhold Exhibit 2 pursuant to section 552.108(a)(2) of the Government Code; (3) the department must withhold the highlighted and marked Texas motor vehicle record information in Exhibits 4, 5, and 6 under section 552.130 of the Government Code; (4) the arrestee's social security number in Exhibits 2, 4, and 6 must be withheld in accordance with section 552.147 of the Government Code; and (5) the remaining submitted information must be released to the requestor. Because our ruling is dispositive, we need not address your remaining argument against disclosure.

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).

---

<sup>3</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

<sup>4</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/seg

Ref: ID# 231599

Enc. Submitted documents

c: Ms. Heather Greenhood  
MCCML  
420 Central SW, Suite 200  
Albuquerque, New Mexico 87102  
(w/o enclosures)