



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2005

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2005-08515

Dear Mr. Gambrell:

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# 232409.

The Houston Police Department (the "department") received a request for information relating to two specified addresses and a named individual at a specified address and involving a stated time interval. You inform us that the department has no information that is responsive to part 2 of this request.¹ You have submitted information that you claim 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.²

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

¹We note that the Act does not require the department to release information that did not exist when it received this request or create responsive information. *See Econ. 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See Gov't Code* §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Gov't Code § 552.101. This exception encompasses the common law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency is asked to compile criminal history information with respect to a particular individual, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993). In part 3 of this request, the requestor seeks access to unspecified information relating to a named individual. This aspect of the request implicates the named individual's right to privacy. Therefore, any information maintained by the department that relates to the named individual as a possible criminal suspect, arrested person, or defendant is protected by common law privacy under *Reporters Committee* and must be withheld from the requestor under section 552.101 of the Government Code.

Section 552.101 also encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Because the information submitted as Exhibit 5 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, this information falls within the scope of section 261.201(a). You do not indicate that the department has adopted a rule that governs the release of this type of information. We therefore assume that no such rule exists. Given that assumption, we conclude that the department must withhold Exhibit 5 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as

information made confidential by law. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Next, we address your claim under section 552.108 of the Government Code. Section 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[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 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 inform us that the information submitted as Exhibit 3 relates to an open and active investigation. You also inform us that although Exhibit 4 relates to an inactive investigation, the statute of limitations has not expired, and the investigation may be reactivated once additional leads are developed. Additionally, you state that Exhibit 6 relates to an open and active criminal prosecution. Based on your representations, we find that section 552.108(a)(1) is applicable to Exhibits 3, 4, and 6. *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 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*. Basic information includes an identification and description of the complainant and a detailed description of the offense. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information under section 552.108(c), even if the information does not literally appear on the front page of an offense or arrest report.

In this instance, however, Exhibit 3 relates to an investigation of a sexual offense. Therefore, the identification and description of the complainant in Exhibit 3 must be withheld under section 552.101 to protect the complainant’s common law privacy interests. *See* Gov’t Code § 552.101; *Indus. Found.*, 540 S.W.2d at 683; Open Records Decision Nos. 393 (1983), 339 (1982). Otherwise, the department must release basic information with respect to Exhibits 3, 4, and 6. The department may withhold the remaining information in Exhibits 3, 4, and 6 under section 552.108(a)(1).

Lastly, we note that section 552.147 of the Government Code³ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.⁴ The department must withhold the social security number of the arrested person in Exhibit 6 under section 552.147.

In summary: (1) any information maintained by the department that relates to the individual named in part 3 of the request as a possible criminal suspect, arrested person, or defendant is protected by common law privacy under *Reporters Committee* and must be withheld under section 552.101 of the Government Code; (2) the department must withhold Exhibit 5 in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code; (3) except for the basic information that must be released under section 552.108(c), the department may withhold Exhibits 3, 4, and 6 under section 552.108(a)(1); (4) the identification and description of the complainant in Exhibit 3 must be withheld under section 552.101 and common law privacy; and (5) the social security number of the arrested person in Exhibit 6 must be withheld under section 552.147.⁵

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

³Added 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).

⁴We 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.

⁵As we are able to make these determinations, we need not address your claim under section 552.130.

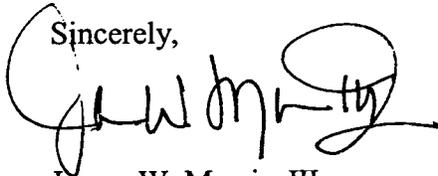
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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. 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/sdk

Ref: ID# 232409

Enc: Submitted documents

c: Mr. James Shu
Law Offices of James Shu and Associates
7324 Southwest Freeway #800
Houston, Texas 77074
(w/o enclosures)