



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2005

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77002

OR2005-09867

Dear Ms. Chang:

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# 235306.

The City of Houston Police Department (the "department") received a request for one hundred and thirty-two specific offense reports. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with the detection, investigation or prosecution of crime. *See* Gov't Code §§ 552.108(a)(1), (a)(2), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Further, a governmental body claiming section 552.108(a)(2) must demonstrate that the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that Exhibits 2 and 3 are inactive criminal investigations for which "the statute of limitations has not run." You also state that Exhibit 7 pertains to an open criminal prosecution on appeal. Based upon these representations, we conclude that the release of Exhibits 2, 3, and 7 would interfere with the detection, investigation, or prosecution of crimes. We therefore agree that section 552.108(a)(1) is applicable to Exhibits 2, 3, and 7. *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). You also advise that Exhibits 4 and 6 consist of records pertaining to cases that are closed and concluded in results other than conviction or deferred adjudication. We therefore agree that section 552.108(a)(2) is applicable to Exhibits 4 and 6.

We note, however, that 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*. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Generally, information identifying the complainant must be released as basic information. *Id.* You state that you have released the basic information from most of the incident reports. However, you claim that the basic information in Exhibit 7 should be withheld under section 552.101 of the Government Code because it contains information about an alleged sexual assault victim.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code 552.101. This section encompasses information protected by 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. *Indust. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), this office concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information

that would identify the victim. *See also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision No. 393 (1983). Accordingly, we have marked the victim's identifying information in Exhibit 7 that must be withheld under section 552.101 in conjunction with common-law privacy. All other basic information must be released. Although section 552.108(a)(1) authorizes you to withhold the remaining information in Exhibits 2, 3, 4, 6, and 7 from disclosure, you may choose to release all or part of this information that is not otherwise confidential by law. *See Gov't Code § 552.007.*

You claim that Exhibit 5 is excepted from disclosure under section 552.101 in conjunction with section 58.007 of the Family Code. Law enforcement records involving juvenile offenders and relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads 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). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See Fam. Code § 51.02(2).* After reviewing Exhibit 5, we find that the information at issue involves juvenile delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, Exhibit 5 is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, the department must withhold Exhibit 5 from disclosure under section 552.101 of the Government Code.

In summary, the department must withhold the marked information in Exhibit 7 under section 552.101 in conjunction with common-law privacy, but must release all other basic information. The department must also release the basic information from Exhibits 2, 3, 4, and 6. The department may withhold the remaining information in Exhibits 2, 3, and 7 under

section 552.108(a)(1) and Exhibit 4 and 6 under section 552.108(a)(2) of the Government Code. The department must withhold Exhibit 5 under section 552.101 in conjunction with section 58.007 of the Family Code. As this ruling is dispositive, we need not address your additional arguments 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).

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).

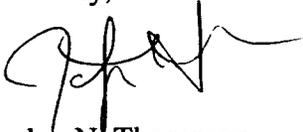
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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. 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,

A handwritten signature in black ink, appearing to read 'JNT', with a long horizontal flourish extending to the right.

Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/kr1

Ref: ID# 235306

Enc. Submitted documents

c: Kathy Kelly
2010 N. Loop W., Suite 270
Houston, TX 77018
(w/o enclosures)