



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2005

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

OR2005-10179

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# 236134.

The Houston Police Department (the "department") received a request for all incident and offense reports for thefts, burglaries, vandalism, and criminal mischief involving a named person over a specified period, and all incident and offense reports involving the same individual at a specified location. You state that you will release portions of the requested information but claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision, and encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency is asked to compile a particular individual's criminal history information, 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); see also Open Records Decision No. 616 at 2-3 (1993). However, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis.

In the present request, the requestor asks for all incident reports regarding a named individual. We determine that the request for incident reports regarding the named individual implicates this individual's rights to privacy. To the extent the department maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information pursuant to section 552.101 in conjunction with common-law privacy in accordance with the decision in *Reporters Committee*.

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), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that Exhibit 2 is an on-going criminal investigation. You state that the requested offense reports in Exhibits 3 and 4 are inactive pending additional leads. You further state that the statute of limitations has not run and the investigations may be reactivated once additional leads are developed. Based upon these representations, we agree that section 552.108(a)(1) is applicable to Exhibits 2, 3, and 4. 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).

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*. See *Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, you may withhold the remaining information in Exhibits 2, 3, and 4 from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of this remaining information in Exhibits 2, 3, and 4 that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, to the extent the department maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information pursuant to section 552.101 in conjunction with common-law privacy in accordance with the decision in *Reporters Committee*. Other than basic information,

Exhibits 2, 3, and 4 may be withheld under section 552.108(a)(1) of the Government Code. As our ruling on this issue is dispositive, we need not reach your remaining arguments.

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 that reads "L. Joseph James". The signature is written in a cursive style with a long horizontal flourish at the end.

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/segh

Ref: ID# 236134

Enc. Submitted documents

c: Mr. Scott A. Kemp
State Farm Lloyds
Park Green Operations Center
P.O. Box 149183
Austin, Texas 78714-9183
(w/o enclosures)