ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2005

Ms. Michele Austin
Assistant City Attorney
City of Houston
P. O. Box 368
Houston, Texas 77001-0368

OR2005-11521

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# 238469.

The Houston Police Department (the "department") received a request for four specified offense reports. You state that you have released some of the information to the requestor. You claim that the remaining requested information is excepted from disclosure pursuant to 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.

You claim that Exhibit 3 is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). You inform us that the information in Exhibit 3 pertains to a criminal investigation that did not result in conviction or deferred adjudication. You further explain that although one suspect was convicted, charges against the other suspect in this investigation were dismissed. You state that the information regarding both suspects is so intertwined that the investigation could not be segregated. Therefore, based on your representations, we conclude that section 552.108(a)(2) is applicable to the information in Exhibit 3.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 (1976)

(summarizing types of basic information that must be made available to public, including detailed description of offense). Accordingly, with the exception of basic information, we conclude that the department may withhold Exhibit 3 pursuant to section 552.108(a)(2) of the Government Code. We note, however, that the department maintains the discretion to release all or part of this particular information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Although you indicate that Exhibit 2 contains criminal history information, upon review we find that no portion of Exhibit 2 constitutes CHRI for the purposes of chapter 411.

Section 552.101 also encompasses common law privacy. Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and that is of no legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body; some kinds of medical information or information indicating disabilities or specific illnesses; and identities of victims of sexual abuse. After reviewing the submitted information, we have concluded that no portion of it constitutes highly intimate or embarrassing information that may be withheld under section 552.101 on the basis of common law privacy.

Next, section 552.130 of the Government Code provides in pertinent part:

> (a) Information is excepted from the requirements of Section 552.021 if the information relates to:

> (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
>
> (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. You must withhold the Texas driver's license and license plate numbers we have marked in Exhibit 2 under section 552.130 of the Government Code.

The remainder of the submitted information contains social security numbers. Section 552.147 of the Government Code 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 social security numbers we have marked in the remainder of the submitted information under section 552.147.[1]

In summary, with the exception of basic information, we conclude that the department may withhold Exhibit 3 pursuant to section 552.108(a)(2) of the Government Code. You must withhold the Texas driver's license and license plate numbers we have marked under section 552.130 of the Government Code. The department must withhold the social security numbers we have marked in the remainder of the submitted information under section 552.147. The remainder of the information must be released to the requestor.

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

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[1]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.

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,

James Forrest
Assistant Attorney General
Open Records Division

JF/segh

Ref: ID# 238469

Enc. Submitted documents

c: Mr. Don Owens
6214 Billington
Houston, Texas 77084
(w/o enclosures)