



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2006

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

OR2006-03779

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# 246431.

The Houston Police Department (the "department") received a request for all records maintained by the department which relate to a named individual, four named business, and two specified addresses, to include:

- (1) Reports for Incident Numbers 445511405, 23093605, 51460905, 191793504, 178243404, 152153404, 120898804, 107630204, 62260004, 51633704, 28355904, 3110804;
- (2) All complaints received, including a specified complaint filed with the department Auto Theft Division; and
- (3) All reports filed with the department Extra Employment Office.

You 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.

Initially, we note that you have only submitted reports for incident numbers 178243404, 6226004, 120898804, 152153404, 03110804, 107630204, 25189499, and three pages from the department Extra Employment System, Exhibits 2 through 9 respectively. To the extent any other information responsive to the request existed on the date the department received this request, we assume you have released it. If you have not released any such information, you must do so 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 next address the exceptions you have raised for 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." Gov't Code § 552.101. This exception encompasses information made confidential by statute. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. 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). Section 58.007 is only applicable to records that pertain to a juvenile as a suspect or offender, and not as a complainant, victim, witness, or other involved party. *See id.*; *see also id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). Furthermore, 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 id.* § 51.02(2). The incident report submitted as Exhibit 4 pertains to juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions to confidentiality in section 58.007 apply to this information. Therefore, we

conclude that Exhibit 4 is confidential pursuant to section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.¹

Section 552.108 of the Government Code provides in relevant 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:

(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[.]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1). 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), (a)(2), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that Exhibits 3, 5, and 7 are inactive criminal investigations for which "the statutes of limitations [have] not run" and that each "may be reactivated once additional leads are developed." Based upon your representations, we conclude that the release of Exhibits 3, 5, and 7 would interfere with the detection, investigation, or prosecution of crime. We therefore agree that section 552.108(a)(1) is applicable to this information. *See Houston*

¹In your brief to this office you stated "you will provide the requestor with a copy of the Public Release Information portion of Exhibits 2, 3, 4, 5, 6, 7, and 8." If a governmental body has voluntarily released information to a member of the public, it may not withhold that same information from further public disclosure, unless release of the information is expressly prohibited by law or the information is made confidential by law. *See* Gov't Code 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (while governmental body may waive right to claim permissive exceptions to disclosure under Act by selectively disclosing information, it is prohibited from disclosing information made confidential by law). Section 58.007 prohibits the release of Exhibit 4 in this instance. Accordingly, Exhibit 4 must be withheld regardless of any previous release by the department to the public. *See* Gov't Code §§ 552.007, .352 (imposing criminal penalties for release of confidential information).

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 state that Exhibits 2, 6, and 8 pertain to criminal investigations that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibits 2, 6, and 8.

Section 552.108(b)(1) excepts from disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” You state that the highlighted pager numbers in Exhibit 9 “are those of law enforcement officers paid for by the City [of Houston] and for use solely in conducting official City business.” You claim that release of this information would interfere with law enforcement and crime prevention, detection, and investigation. Having reviewed your arguments and the submitted information, we agree that release of the officers’ pager numbers would interfere with law enforcement or crime prevention. *See* Open Records Decision No. 506 at 2 (1988) (statutory predecessor to section 552.108(b) excepted from disclosure the cellular mobile phone numbers assigned to Harris County officials and employees with specific law enforcement responsibilities). Accordingly, the department may withhold the pager numbers you have highlighted in Exhibit 9 under section 552.108(b)(1) of the Government Code.

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* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic front page offense and arrest information in Exhibits 2, 3, 5, 6, 7, and 8, you may withhold these exhibits from disclosure under section 552.108. We note that you have the discretion to release all or part of the remaining information in these exhibits that is not otherwise confidential by law. Gov’t Code § 552.007.

Finally, we note that the request is from an investigator with the Office of the Attorney General Consumer Protection and Public Health Division (the “OAG”). The interagency transfer doctrine provides that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinion. Nos. GA-0055 (2003); Open Records Decision Nos. 680 at 7 (2003), 667 at 3-4 (2000). However, an interagency transfer of confidential information is prohibited where a confidentiality statute enumerates specific entities to which release of confidential information is authorized, and the requesting agency is not among the statute’s enumerated entities. *See* Attorney General Opinion DM-353 at 4 n.6 (1995); Open Records Decision No. 661 at 3 (1999). Thus, under the interagency transfer doctrine the department has the discretion to release to the OAG the submitted information that is excepted under

section 552.108 of the Government Code without waiving that exception to the public disclosure of that information. However, the department may not release pursuant to the interagency transfer doctrine the information that is confidential under section 58.007 of the Family Code. *See, e.g.*, ORD 680 at 7 (interagency transfer doctrine cannot operate to allow police department to transfer information confidential under section 58.007 to governmental body that is not among statute's enumerated entities authorized to receive such information).²

In summary, Exhibit 4 must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Pursuant to the interagency transfer doctrine, the department has the discretion to release to the OAG the information subject to section 552.108 of the Government Code. However, should the department choose not to exercise its discretion under the interagency transfer doctrine, except for basic information, the department may withhold Exhibits 2, 3, 5, 6, 7, and 8, as well as the highlighted pager numbers in Exhibit 9, under section 552.108 of the Government Code. The remaining submitted information must be released.

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).

²As our ruling on these issues is dispositive, we need not address your remaining arguments against disclosure.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 246431

Enc. Submitted documents

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