



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2006

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2006-04208

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# 247250.

The Houston Police Department (the "department") received a request for specified incident reports. You claim that the requested 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.

The department claims that Exhibits 2, 3, 6, and 9 are excepted from disclosure under section 552.101 in conjunction with section 261.201(a) of the Family Code.¹ Section 261.201(a) of the Family Code 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 this code and applicable federal or state law or under rules adopted by an investigating agency:

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes.

(1) a report of alleged or suspected abuse or neglect made under this chapter 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 this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Exhibit 3 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information is within the scope of section 261.201(a) of the Family Code. You state that the department has no rule that would allow for the release of this type of information. Based on your representation and our review, Exhibit 3 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold this information from disclosure under section 552.101 of the Government Code as information made confidential by law. However, Exhibits 2, 6, and 9 pertain to allegations of abuse of a fourteen-year-old who is married. For purposes of chapter 261 investigations, a child is defined as a “person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.” *See* Fam. Code § 101.003(a). Therefore, this information is not within the scope of 261.201(a) of the Family Code and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses the common law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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. We have marked the information in Exhibit 6 that the department must withhold under section 552.101 on the basis of common law privacy.

Next, we turn to your arguments under section 552.108. 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(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), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit 2 pertains to an investigation that is inactive pending additional leads. You explain, however, that the statute of limitations has not run

and the investigation may be reactivated once additional leads are developed. Based upon your representations, we find that section 552.108(a)(1) is applicable to Exhibit 2. *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(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You assert that Exhibits 4, 5, 7, and 8 pertain to cases that concluded in final results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

We note, however, that information normally found on the front page of an incident report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d at 186-188; Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page incident report information from Exhibits 2, 4, 5, 7, and 8 even if this information is not actually located on the front pages of the incident reports. Although sections 552.108(a)(1) and (a)(2) authorize you to withhold the remaining information in Exhibits 2, 4, 5, 7, and 8 from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Next, section 552.130 excepts from disclosure certain motor vehicle information and provides in relevant part:

(a) Information is excepted from the requirement 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. Therefore, the department must withhold from disclosure the marked Texas driver's license numbers in Exhibit 6 and the Texas license plates numbers in the photographs in Exhibit 9 under section 552.130.

The remaining submitted information contains a social security number. 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 number we have marked in Exhibit 6 under section 552.147.²

In summary, the department must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the information we have marked in Exhibit 6 under section 552.101 of the Government Code in conjunction with common law privacy. With the exception of basic information, the department may withhold Exhibit 2 under section 552.108(a)(1) of the Government Code and Exhibits 4, 5, 7, and 8 under section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked in 1) Exhibits 6 and 9 under section 552.130 of the Government Code and 2) Exhibit 6 under section 552.147 of the Government Code. The remaining submitted 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 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).

²We 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.

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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 247250

Enc. Submitted documents

c: Mr. Tommy Gray
7115 Longview Drive
Houston, Texas 77040
(w/o enclosures)