



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2007

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

OR2007-00729

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# 269557.

The Houston Police Department (the "department") received a request for information related to a specified sexually oriented business and a named employee of the business. You state that the department will release information related to the business's registration. 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.

You assert that the submitted offense reports are excepted under section 552.108 of the Government Code. Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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)(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 state that the submitted information pertains to cases that concluded in results other than conviction or deferred adjudication. Based on your representations, we conclude that section 552.108(a)(2) is applicable to this information.

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic front-page offense and arrest information, the department may withhold the submitted information under section 552.108.

We note that some of the basic information in Exhibits 3 and 4 is excepted under section 552.101 of the Government Code in conjunction with common-law privacy.¹ The doctrine of common-law privacy 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 type 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. Thus, the department must withhold the types of information we have marked in Exhibits 3 and 4 under section 552.101 of the Government Code in conjunction with common-law privacy.

The social security number of an arrestee, although not excepted from disclosure under section 552.108, is excepted under section 552.147 of the Government Code. Section 552.147 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 contained in the basic information under section 552.147.²

To conclude, with the exception of the basic front-page offense and arrest information, the department may withhold the submitted information under section 552.108. The department must withhold the types of information we have marked in Exhibits 3 and 4 under section 552.101 of the Government Code in conjunction with common-law privacy, and the

¹Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101.

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.

arrestee's social security number under section 552.147. The remaining basic information must be released to the requestor.³

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.

³Because we resolve your request under section 552.108, we need not address the other exceptions you raise, except to note that driver's license numbers, for which you raise section 552.130, do not constitute "basic information" that is required to be released under section 552.108(c). See Open Records Decision No. 127 at 4 (1976).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/eb

Ref: ID# 269557

Enc. Submitted documents

c: Mr. Walter Fortenberry
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(w/o enclosures)