



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 14, 2007

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

OR2007-01906

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# 275082.

The Houston Police Department (the "department") received a request for offense reports and other information relating to 18 specified case numbers. You state that the city will release information relating to five of the specified case numbers. You claim that information relating to six other case numbers 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 have reviewed the information you submitted.<sup>1</sup> As you have not submitted information that relates to the other seven case numbers, we assume that the department also will release any other information that is responsive to this request, to the

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<sup>1</sup>This letter ruling assumes that the submitted sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

extent that such information existed when the department received the request.<sup>2</sup> *See* Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Section 552.108(a)(1) of the Government Code excepts from public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that Exhibits 3, 5, and 6 are related to investigations that are inactive pending additional leads. You explain, however, that the statute of limitations has not run, and the investigations may be reactivated once additional leads are developed. You also inform us that Exhibit 7 is related to a pending criminal prosecution. Based on your representations, we conclude that section 552.108(a)(1) is applicable to Exhibits 3, 5, 6, and 7. *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 “[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). You state that Exhibits 2 and 4 are related to concluded criminal investigations that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is applicable to Exhibits 2 and 4.

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*. *See* 531 S.W.2d at 186-88. The department must release basic information with respect to each of the submitted reports, including detailed descriptions of the offenses, even if the information does not literally appear on the front page of the report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the submitted information under section 552.108 of the Government Code.

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<sup>2</sup>We note that the Act does not require the a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

We note that under section 552.147 of the Government Code, “[t]he social security number of a living person is excepted from” required public disclosure under the Act.<sup>3</sup> Gov’t Code § 552.147(a). The department must withhold the social security numbers of arrested persons under section 552.147.

In summary: (1) the department may withhold the submitted information under section 552.108(a)(1) and (2) of the Government Code, except for the basic information that must be released under section 552.108(c); and (2) the department must withhold the social security numbers of arrested persons under section 552.147 of the Government Code. As we are able to make these determinations, we need not address your other arguments against disclosure.

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).

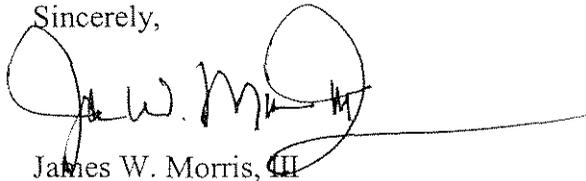
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<sup>3</sup>We also note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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, appearing to read "James W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/jww

Ref: ID# 275082

Enc: Submitted documents

c: Mr. Howard M. Bookstaff  
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(w/o enclosures)