



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 21, 2007

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

OR2007-03081

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# 277665.

The Houston Police Department (the "department") received a request for information involving a building at a specified address during the past 10 years. 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 have reviewed the information you submitted.¹

Section 552.108 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 state that the information submitted as Exhibits 3, 5, and 7 pertains to criminal investigations that are

¹This letter ruling assumes that the submitted representative 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).

inactive pending additional leads. You also state, however, that the statutes of limitation have not run and the investigations may be reactivated once additional leads are developed. You assert that release of Exhibits 3, 5, and 7 would interfere with the detection and investigation of crime. Based on your representations, we conclude that section 552.108(a)(1) is applicable to Exhibits 3, 5, 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 the information submitted as Exhibits 2, 4, and 6 pertains to concluded 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, 4, and 6.

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, even if the information does not literally appear on the front page of an offense or arrest report. We note that basic information includes the identity of the complainant and a detailed description of the offense. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, the information in Exhibit 2 pertains to an alleged sexual offense. Therefore, the department must withhold the marked information in Exhibit 2 that identifies the complainant under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov’t Code § 552.101; *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). Otherwise, the department must release basic information with respect to Exhibits 2 through 7 in accordance with section 552.108(c). The department may withhold the rest of the submitted information under section 552.108 of the Government Code. As we are able to make these determinations, we need not address the other exceptions you claim.

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.

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 large, looped initial "J" and a long horizontal stroke extending to the right.

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

JWM/jb

Ref: ID# 277665

Enc: Submitted documents

c: Ms. Karen Garland
Zelle, Hofmann, Voelbel, Mason & Gette
1201 Main Street, Suite 3000
Dallas, Texas 75202
(w/o enclosures)