



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2007

Ms. YuShan Chang
Assistant City Attorney
City of Houston - Legal Department
P. O. Box 368
Houston, Texas 77001-0368

OR2007-03360

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# 274189.

The Houston Police Department (the "department") received a request for all reports where a named person was a complainant, witness, or reportee and another named person was a suspect. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the submitted police reports pertain to cases that are closed and concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

We note, however, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. *See Gov't Code* § 552.108(c); *see also 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); Open Records

Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes a detailed description of the offense. *See id.* at 4. Here, each report has a brief description of the offense on the first page. We assume that description is the detailed description for *Houston Chronicle* purposes. In this instance, portions of this description in report #145701804 are subject to section 552.101 of the Government Code which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This provision encompasses information protected by common-law 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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the details of the offense in report #145701804 that are excepted from disclosure under section 552.101 in conjunction with common-law privacy and may not be released as basic information.

We also note that reports #145701804 and #007393698 contain an arrestee’s 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. Gov’t Code § 552.147. Therefore, the department must withhold the arrestee’s social security number in reports #145701804 and #007393698 under section 552.147 of the Government Code.¹

In summary, the department must withhold the information we have marked in report #145701804 that is excepted from disclosure under section 552.101 in conjunction with common-law privacy. Additionally, the department must withhold the arrestee’s social security number in reports #145701804 and #007393698 under section 552.147 of the Government Code. With the exception of the remaining basic information, the department may withhold the remaining information in reports #145701804, #007393698,

¹We 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.

and 033068405 under section 552.108(a)(2) of the Government Code.² As our ruling is dispositive, we need not address your remaining argument.

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).

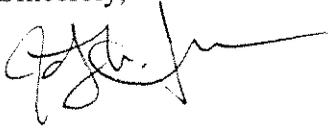
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

²Although section 552.108(a)(1) authorizes you to withhold the remaining information in reports #145701804, #007393698, and 033068405 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.

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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 274189

Enc. Submitted documents

c: Ms. Amanda J. Chisholm
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(w/o enclosures)