



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2007

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

OR2007-03818

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#275101.

The Houston Police Department (the "department") received a request for information pertaining to five specific addresses over a particular period of time. 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.¹

Section 552.108(a)(1) 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: (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 id.*

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

§§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us 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 that the investigation may be reactivated once additional leads are developed. Based on your representations, we agree 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).

We note, however, that 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). We believe such basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of basic front page offense and arrest information, the department may withhold Exhibit 2 under section 552.108(a)(1) of the Government Code. Basic information also includes the identification and description of the complainant. *Id.* However, as Exhibit 2 pertains to a sexual assault, certain basic information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code encompasses the doctrine of 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. *See 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. Additionally, 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). Based on your arguments and our review, we find that Exhibits 2, 3, and 5 contain information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Accordingly, the department must withhold the basic information you have marked in Exhibit 2, and the information we have marked in Exhibits 3 and 5, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 58.007 of the Family Code provides that juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, “child” means a person who is ten years of age or older and

under seventeen years of age at the time of the reported conduct. *See* Fam. Code § 51.02(2). Section 58.007(c) reads as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Id. § 58.007. Upon review, we determine that Exhibits 4, 6, and 7 are juvenile law enforcement records that pertain to conduct that occurred after September 1, 1997. Because none of the exceptions in section 58.007 apply, we determine that Exhibits 4, 6, and 7 are confidential under section 58.007(c) and must be withheld pursuant to section 552.101 of the Government Code.²

Section 552.130 of the Government Code 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. Accordingly, you must withhold the Texas motor vehicle record information you have marked in Exhibit 5 under section 552.130 of the Government Code.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.147 of the Government Code provides that the social security number of a living person is excepted from required public disclosure under the Act. The department may withhold the social security numbers you have marked in Exhibits 3 and 5 pursuant to section 552.147 of the Government Code.

In summary, with the exception of basic information, the department may withhold Exhibit 2 under section 552.108 of the Government Code and the social security numbers in Exhibits 3 and 5 under section 552.147 of the Government Code. The department must withhold: (1) the basic information you have marked in Exhibit 2 and the information we have marked in Exhibits 3 and 5 under section 552.101 of the Government Code in conjunction with common-law privacy; (2) Exhibits 4, 6, and 7 under section 552.101 in conjunction with section 58.007 of the Family Code; and (3) the Texas motor vehicle record information in Exhibit 5 pursuant to section 552.130 of the Government Code.

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).

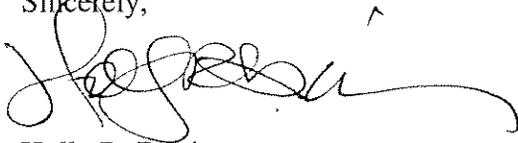
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 'Holly R. Davis', with a long horizontal flourish extending to the right.

Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 275101

Enc. Submitted documents

c: Mr. Saul Gonzalez
P. M. Clinton International Investigations
P. O. Box 55721
Houston, Texas 77255-5721
(w/o enclosures)