



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2007

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2007-14752

Dear Ms. De La Garza:

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# 294315.

The Houston Police Department (the "department") received a request for all incident reports involving violent crimes for a specified location during a specified time period. 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.

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, such as section 58.007 of the Family Code. Law enforcement records involving juvenile offenders and relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) 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.

Fam. Code § 58.007(c). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). You state that Exhibits 2 and 3 involve juvenile delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Accordingly, the department must withhold Exhibits 2 and 3 from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure for these Exhibits.

You assert that the remaining information is excepted from disclosure under section 552.108 of the Government Code, which provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) 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). 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.* §§ 552.108(a)(1), (a)(2), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits 4 and 6 relate to criminal investigations that are inactive pending additional leads. You also state that the statutes of limitation have not run and these investigations may be reactivated once additional leads are developed. Thus, based on your representations and our review, we determine that the release of Exhibit 6 would interfere with the detection, investigation, or prosecution of crime. We, therefore, agree that section 552.108(a)(1) is applicable to this Exhibit. *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). However, Exhibit 4 relates to an offense of aggravated assault that occurred in 2003. The statute of limitations for aggravated assault is three years from the date of the commission of the offense. Code Crim. Proc.

arts. 12.01(6) (limitations on felony not otherwise listed in article 12.01 of Code of Criminal Procedure is three years from date of offense), 12.03(d) (any offense that bears title “aggravated” carries same limitation period as primary crime). More than three years has elapsed since the events giving rise to the investigation in Exhibit 4. You have not informed this office that any criminal charges were filed within the limitations period in this case. Furthermore, you have not otherwise explained how release of this report would interfere with the detection, investigation, or prosecution of crime. Thus, section 552.108(a)(1) does not apply to Exhibit 4. Next, you state that Exhibits 5 and 7 pertain to cases that concluded in a final result other than conviction or deferred adjudication. We, therefore, agree that section 552.108(a)(2) applies to Exhibits 5 and 7.

With respect to Exhibits 5, 6, and 7, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, basic information from Exhibits 5, 6, and 7 must be released. The remaining information in these Exhibits may be withheld under section 552.108.¹ Because section 552.108 does not apply to Exhibit 4, it may not be withheld on this basis. Therefore, we will address your remaining arguments against disclosure for Exhibit 4.

You claim that portions of Exhibit 4 are protected by common-law privacy. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. 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. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: personal financial information not relating to a financial transaction between an individual and a governmental body, see Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims and sexual abuse, see Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Furthermore, an individual’s criminal history when compiled by a governmental body may be protected under common-law privacy. Cf. *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We have reviewed Exhibit 4 and

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of these Exhibits.

marked information that is confidential and must be withheld under common-law privacy. Accordingly, the department must withhold the information we have marked in Exhibit 4 under section 552.101 of the Government Code in conjunction with common-law privacy.

You also claim that a portion of Exhibit 4 is excepted under section 552.130 of the Government Code. Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. Accordingly, the department must withhold the Texas driver’s license information you have marked in Exhibit 4 pursuant to section 552.130 of the Government Code.

Finally, you claim that the social security number you have highlighted in Exhibit 4 is excepted from disclosure under section 552.147 of the Government Code. This section provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the department may withhold the social security number you have marked in Exhibit 4 under section 552.147.

In summary, the department must withhold Exhibits 2 and 3 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of basic information, the department may withhold Exhibits 5, 6, and 7 pursuant to section 552.108 of the Government Code. The department must withhold the information we have marked in Exhibit 4 under section 552.101 in conjunction with common-law privacy. The department must withhold the information you have marked in Exhibit 4 under section 552.130. The department may withhold the information you have marked in Exhibit 4 under section 552.147 of the Government Code. The remaining information must be released.

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

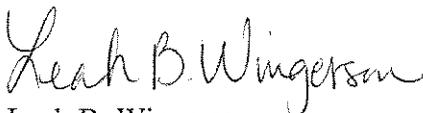
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 294315

Enc. Submitted documents

c: Ms. Maria A. Ochoa
The Law Offices of Dax F. Garza
2200 Post Oak Boulevard, Suite 650
Houston, Texas 77056
(w/o enclosures)