



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2008

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

OR2008-01272

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 #300485.

The Houston Police Department (the "department") received a request for fifteen specified police reports. 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.

Initially, we note that you have not submitted information responsive to the request for report numbers 101095706, 26713907, and 60951606. To the extent that these reports existed when the department received this request, we assume they have been released. If not, you must do so at this time. *See Gov't Code* § 552.006, .301, .302; *see Open Records Decision No. 664 (2000)* (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.108 of the Government Code 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 inform us that Exhibits 4 and 5 relate to criminal investigations that are inactive pending additional leads. You also inform us that these investigations may be reactivated once additional leads are developed. We note however, that Exhibit 4 relates to a misdemeanor charge of theft. The event that gave rise to this investigation occurred on July 6, 2005. The statute of limitations for a misdemeanor is two years. *See* Crim. Proc. Code art. 12.02. More than two years has elapsed since the event giving rise to the investigation in Exhibit 4. Similarly, Exhibit 5 relates to a charge of criminal mischief. The event that gave rise to this investigation occurred on May 21, 2004. The longest possible statute of limitations for the offense described in Exhibit 5 is three years. *See* Pen. Code § 28.03; Crim. Proc. Code art. 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). More than three years has elapsed since the event giving rise to the investigation in Exhibit 5. You have not informed this office that any criminal charges were filed within the limitations periods in these cases. Furthermore, you have not otherwise explained how release of these reports would interfere with the detection, investigation, or prosecution of crime. Thus, Exhibits 4 and 5 may not be withheld under section 552.108(a)(1) of the Government Code.

You advise us that Exhibits 3, 6, 8, 9, and 13 pertain to cases that concluded in a final result other than conviction or deferred adjudication. Based on this representation and our review, we agree that section 552.108(a)(2) applies to Exhibits 3, 6, 8, 9, and 13. With respect to these exhibits, we note that 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). However, we note, and you acknowledge, that Exhibits 3, 8, and 9 contain basic information that may be excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Common-law privacy 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. This office has found that the following types of information are also excepted from required public disclosure under common-law privacy: 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 of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Upon review, we have marked the information in Exhibits 3, 8, and 9 that is protected by common-law privacy and cannot be released as basic information. All basic information from Exhibits 6 and 13 must be released. The remaining information in these exhibits may be withheld under section 552.108. You also argue that some of the information in Exhibits 2, 7, 10, 11, and 12 is excepted from disclosure under section 552.101 in conjunction with common-law privacy. Upon review, we have marked the information in Exhibits 2, 7, 10, 11, and 12 that must be withheld under section 552.101 in conjunction with common-law privacy.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides in part:

(a) Information is excepted from the requirements 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(a). The department must withhold the Texas motor vehicle record information that you have highlighted under section 552.130 of the Government Code.

The submitted information contains social security numbers. 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. Thus, the department may withhold social security numbers pursuant to section 552.147.

In summary, with the exception of basic information, the department may withhold Exhibits 3, 6, 8, 9, and 13 under section 552.108(a)(2) of the Government Code. In releasing basic information from Exhibits 3, 8, and 9, the department may not release the information we have marked under section 552.101 of the Government Code in conjunction with

common-law privacy. The department must also withhold the information we have marked within Exhibits 2, 7, 10, 11, and 12 under section 552.101 in conjunction with common-law privacy. The department must withhold the Texas motor vehicle record information it has highlighted under section 552.130 of the Government Code, and it may withhold social security numbers under section 552.147 of the Government Code. The remaining information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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 that reads "Reg Hargrove". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 300485

Enc. Submitted documents

c: Ms. Eyder Peralta
The Houston Chronicle
801 Texas Avenue
Houston, Texas 77002
(w/o enclosures)