



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 6, 2008

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

OR2008-03038

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# 304366.

The Houston Police Department (the "department") received a request for information (1) pertaining to specified case numbers, including the personnel files of law enforcement personnel who were involved in the investigation of three of the requested cases, and (2) pertaining to protocols, policies, or practices, as well as any documents concerning training programs offered by the department between 1960 and 1980, relating to the interrogation of suspects or the collection or recovery of forensic evidence. You state that the department will release a portion of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, 552.136, 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 the requested personnel files or information relating to training programs offered by the department between 1960 and 1980, relating to the interrogation of suspects or the collection or recovery of forensic evidence. To the extent this information existed when the department received this request, we assume it has 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).

You claim that Exhibits 2, 3, 5, 7 and 8 are subject to section 552.108(a) of the Government Code. Section 552.108 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). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that Exhibits 2, 3, 7 and 8 relate to an open and active criminal prosecution. You note that although this case has gone to trial and a conviction was obtained, the case is currently on appeal. You have provided documentation that reflects the status of the appeal. Based upon your representations and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to Exhibits 2, 3, 7 and 8. *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) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that Exhibit 5 relates to a criminal investigation that has concluded in a result other than conviction or deferred adjudication. Accordingly, we agree that section 552.108(a)(2) is applicable to Exhibit 5.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). With the exception of basic information, the department may withhold Exhibits 2, 3, 7 and 8 under section 552.108(a)(1) of the Government Code and Exhibit 5 under section 552.108(a)(2) of the Government Code.<sup>1</sup>

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 former section 51.14 of the Family Code. Prior to its repeal by the Seventy-Fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to juvenile conduct occurring before January 1, 1996 are governed by

---

<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note that basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. In this instance, Exhibit 4 involves juvenile delinquent conduct that occurred in 1980. Therefore, Exhibit 4 is confidential under former section 51.14 of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. We have marked the CHRI that must be withheld in Exhibit 6 under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. The department has failed to demonstrate how any portion of the remaining information in Exhibit 6 constitutes CHRI for the purposes of chapter 411. Therefore, none of the remaining information in Exhibit 6 may be withheld on that basis.

You argue that the fingerprints submitted in Exhibit 6 are excepted from disclosure under section 552.101 in conjunction with chapter 560 of the Government Code. Chapter 560 provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act).<sup>2</sup> You state that the individuals whose fingerprints are at issue have not provided consent to release this information and that you are not aware of any statutory provision that would require disclosure of this information in this instance. Therefore, the department must withhold the information we have marked in Exhibit 6 under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

---

<sup>2</sup>We note that you raise section sections 559.001, 559.002, and 559.003 for fingerprint information. These sections were renumbered as chapter 560 by the Seventy-eighth Legislature. *See* Act of May 20, 2003, 78th Leg., R.S., ch. 1275, § 2 (78), 2003 Tex. Gen. Laws 4140, 4144.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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). 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. This office has found that a compilation of an individual's criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Accordingly, we have marked the information in Exhibit 6 that is confidential under common-law privacy and that the department must withhold under section 552.101 of the Government Code.

You claim that some of the remaining information in Exhibit 6 is excepted from disclosure under section 552.130 of the Government Code. This section excepts from disclosure information that relates to a Texas driver's license or motor vehicle title or registration. Gov't Code § 552.130. The department must withhold the Texas motor vehicle information you have marked in Exhibit 6 under section 552.130 of the Government Code.

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.<sup>3</sup> *Id.* § 552.147(a). The department may withhold the arrestee's social security number in Exhibit 2 and the social security numbers you have marked in Exhibit 6 under section 552.147.

In summary, with the exception of basic information, the department may withhold Exhibits 2, 3, 7 and 8 under section 552.108(a)(1) of the Government Code and Exhibit 5 under section 552.108(a)(2) of the Government Code. The department must withhold Exhibit 4 under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code. The department must withhold the information we have marked in Exhibit 6 under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code, section 560.003 of the Government

---

<sup>3</sup>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.

Code, and common-law privacy. The department must withhold the Texas motor vehicle information you have marked under section 552.130. The department may withhold the arrestee's social security number in Exhibit 2 and the social security numbers you have marked in Exhibit 6 under section 552.147 of the Government Code. The remaining submitted 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).

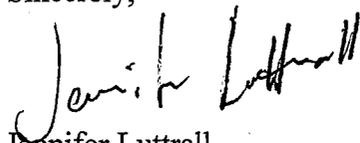
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 304366

Enc. Submitted documents

c: Mr. Greg Macey  
Kirkland & Ellis, LLP  
153 East 53<sup>rd</sup> Street  
New York, New York 10022-4611  
(w/o enclosures)