



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 17, 2008

Ms. Kristy J. Orr  
Assistant City Attorney  
City of Houston - Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2008-03519

Dear Ms. Orr:

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# 304827.

The Houston Police Department (the "department") received a request for one hundred and one incident reports regarding a specified address. You state that that the department will release seven reports to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have only submitted twenty-one incident reports. To the extent any additional reports existed on the date the department received this request, we assume you have released them. If you have not released any such reports, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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] release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body

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<sup>1</sup>Although the department's assertion of section 552.136 was not timely under section 552.301 of the Government Code, we will address this exception, which is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .301, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that Exhibits 2, 3, and 5 through 22 relate to criminal investigations that are inactive pending additional leads. You also inform us that the statute of limitations has not run and these investigations may be reactivated once additional leads are developed. However, we note that the statute of limitations for the offenses listed in Exhibits 12, 14, 15, 16, 17, 18, 19, and 21 have expired. *See* Crim. Proc. Code art. 12.02 (indictment or information for misdemeanor offense may be presented within two years from date of commission of offense, and not afterward). We therefore find you have failed to reasonably explain how release of Exhibits 12, 14, 15, 16, 17, 18, 19, and 21 would interfere with law enforcement. Accordingly, the department may not withhold Exhibits 12, 14, 15, 16, 17, 18, 19, and 21 pursuant to section 552.108(a)(1) of the Government Code.

We further note that the limitations periods for the offenses listed in Exhibits 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 20, and 22 have not expired. *See* Crim. Proc. Code art. 12.01 (listing time limits for presentation of felony indictments), .02. We therefore conclude that the release of Exhibits 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 20, and 22 would interfere with the detection, investigation, or prosecution of crime. *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). Next, you inform us that Exhibit 4 relates to pending prosecution for which the Harris County District Attorney's Office has accepted charges. Based on your representations, we conclude that the release of Exhibit 4 would interfere with the detection, investigation, or prosecution of crime. *Id.* Thus, section 552.108(a)(1) is applicable to Exhibits 2 through 11, 13, 20, and 22.

However, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. 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). Therefore, we agree that with the exception of basic information, the department may withhold Exhibits 2 through 11, 13, 20, and 22 under section 552.108.<sup>2</sup> However, we note that certain basic information contained in Exhibit 2 is excepted from disclosure under section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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

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<sup>2</sup>As our ruling is dispositive for the information in Exhibit 4, we need not address your argument under section 552.136 of the Government Code.

the public. *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. We have marked the basic information in Exhibit 2 that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code 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. The department must withhold the Texas license plate information and driver’s license information we have marked in Exhibits 12, 14, 15, 16, 17, 18, 19, and 21 under section 552.130.

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> Gov’t Code § 552.147(a). The department may withhold an arrestee’s social security number under section 552.147.

In summary, with the exception of basic information, the department may withhold Exhibits 2 through 11, 13, 20, and 22 under section 552.108 of the Government Code. The department must withhold 1) the basic information we have marked in Exhibit 2 under section 552.101 of the Government Code in conjunction with common-law privacy and 2) the Texas license plate information and driver’s license information we have marked in Exhibits 12, 14, 15, 16, 17, 18, 19, and 21 under section 552.130 of the Government Code. The department may withhold an arrestee’s social security number under section 552.147 of the Government Code. The remaining information must be released to the requestor.<sup>4</sup>

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

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<sup>3</sup>We also 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.

<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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).

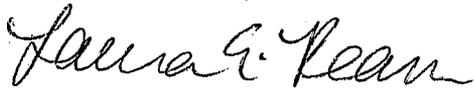
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 304827

Enc. Submitted documents

c: Mr. Chris Kastens  
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(w/o enclosures)