



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2008

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

OR2008-04603

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# 305528.

The Houston Police Department (the "department") received a request for twelve incident reports. You claim that portions of the submitted information are 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 information you have submitted.

You claim that portions of Exhibit 8 are excepted 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. This section encompasses the common-law right of 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. *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. In addition, this office has found that the following types of information are 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).

Upon review, we agree that Exhibit 8 contains information that is highly embarrassing and not of legitimate public interest. However, we note that the requestor is the authorized representative of the individual whose private information is at issue. Thus, the requestor has a special right of access to this information. *See* Gov't Code § 552.023(a) ("a person or a person's authorized representatives has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Thus, because the information at issue relates to the requestor's client, it may not be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.108 provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]
- (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)(1)-(2). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims 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. *See* Gov't Code §§ 552.108(a)(2), .301(e)(1)(A).

In this instance, you state that Exhibits 3, 4, 6, and 9 relate to investigations that are inactive pending additional leads. You further state that the statutes of limitations have not run and

that the investigations may be reactivated once additional leads are developed. Based on these representations, we conclude that the release of Exhibits 3, 6, and 9 would interfere with the detection, investigation, or prosecution of crimes. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Exhibit 4, however, relates to a misdemeanor charge of assault. The event that gave rise to this investigation occurred on December 7, 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. Therefore, the department may not withhold Exhibit 4 under section 552.108(a)(1).

Next, you state that Exhibits 2, 7, and 11 pertain to criminal investigations where the complainant did not pursue charges. Further, you state that Exhibits 5, 10, and 12 pertain to investigations for which the statutes of limitations have run and no arrests were made. Accordingly, you state that Exhibits 2, 5, 7, 10, 11, and 12 pertain to criminal investigations that concluded in final results other than conviction or deferred adjudication. Accordingly, we agree that section 552.108(a)(2) is applicable to Exhibits 2, 5, 7, 10, 11, and 12.

You also state that Exhibit 13 pertains to a criminal investigation that concluded in a result other than conviction or deferred adjudication. You explain, however, that Exhibit 13 concluded in a determination by the department “to refer the complainant to the [City of Houston’s] Prosecutor’s Office.” Having considered your representations, we find that you have not sufficiently demonstrated that Exhibit 13 relates to a concluded investigation that did not result in conviction or deferred adjudication. We therefore conclude that the department may not withhold Exhibit 13 under section 552.108(a)(2) of the Government Code.

With respect to Exhibits 2, 3, 5, 6, 7, 9, 10, 11, and 12, 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). Basic information refers to information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold Exhibits 3, 6, and 9, under sections 552.108(a)(1) and Exhibits 2, 5, 7, 10, 11, and 12 under section 552.108(a)(2) of the Government Code.

You claim section 552.130 for a portion of the remaining information. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). You have marked information in Exhibit 8 that is subject to section 552.130. We note, however, that section 552.130 protects personal privacy. In this instance, the Texas motor vehicle record information at issue belongs to the requestor’s client. As such, the requestor has a right of

access to his client's driver's license information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, the requestor's client's driver's license information may not be withheld in this instance under section 552.130.

In summary, with the exception of basic information, the department may withhold Exhibits 3, 6, and 9 under section 552.108(a)(1) and Exhibits 2, 5, 7, 10, 11, and 12 under section 552.108(a)(2). The remaining information must be released.¹

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,

¹We note that some of the information being released is confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because such information may be confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor, the department should again seek our decision.

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 305528

Enc. Submitted documents

c: Mr. Kevin Strehlow
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(w/o enclosures)