



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2008

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

OR2008-13190

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# 322798.

The Houston Police Department (the "department") received a request for eight specified incident reports. You state that you will release two of the reports. You claim that the remaining reports are excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 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 . . . 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)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) is applicable only if the information in question is related to a concluded case that did not result in a conviction or a deferred adjudication. You inform us that Exhibits 3, 4, 5, and 7 pertain to criminal investigations that were discontinued due to the complainants' failure to pursue charges. You also inform us that Exhibit 6 pertains to a criminal investigation where there were no suspects or arrests. Based on your representations and our review, we find that section 552.108(a)(2) is applicable to Exhibits 3, 4, 5, 6, and 7. You further inform us that Exhibit 2 is related to an investigation that involved two arrested persons, one of whom was convicted. You also explain, and your documentation reflects, that the charges against the other arrested person were dismissed.

You contend that the information relating to the convicted individual and the individual against whom the charges were dismissed is so intertwined that it cannot be easily separated and that release of information relating to the convicted individual would reveal information relating to the individual against whom the charges were dismissed. Based on your representations and our review, we agree that the information cannot be separated. Accordingly, we conclude that section 552.108(a)(2) is also applicable to Exhibit 2.

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing 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). *See* 531 S.W.2d at 186-88. The department must release basic information from the reports, including a detailed description of the offenses, even if this information does not literally appear on the front page of the offense reports. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). With the exception of basic information, the department may withhold the submitted exhibits under section 552.108(a)(2).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). If the governmental body does not file suit over 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

¹As our ruling is dispositive, we need not address your argument under section 552.130 of the Government Code. You state that you will withhold the arrestees’ social security numbers under section 552.147 of the Government Code. ORD 127 (basic information includes an arrestee’s social security number). Section 552.147(b) 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.

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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 322798

Enc. Submitted documents

c: Mr. Kenny Rodgers
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(w/o enclosures)