



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2010

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston, Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2010-09897

Dear Ms. De La Garza:

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# 385420.

The City of Houston Emergency Center (the "center") received two requests for "magic reports," computer-aided dispatch ("CAD") slips for the past two years, and tape recordings for the past six months related to: 1) four specified addresses, and 2) seven specified telephone numbers. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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: (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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you state Exhibits 2, 3, and 3-H relate to open and active criminal investigations by the Houston Police Department (the "department"). You also state Exhibit 3-B and portions of the audio recording in Exhibit 3-A relate to inactive investigations by the department that may be reactivated once additional leads are developed. Based upon these representations and our review, we conclude release of this information 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). Thus, section 552.108(a)(1) is applicable to this information.

Section 552.108(a)(2) 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. You state Exhibits 3-D, 3-F, and portions of the audio recording in Exhibit 3-A pertain to concluded criminal investigations by the department that did not result in convictions or deferred adjudications. Based on your representations and our review, we agree Exhibits 3-D, 3-F, and portions of Exhibit 3-A are subject to section 552.108(a)(2).

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). We note Exhibits 3-B, 3-D, 3-F, and 3-H are CAD reports. In Open Records Decision No. 649 (1996), this office concluded that CAD reports contain substantially the same basic information that is contained in offense and arrest reports. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in radio cards or radio logs and front page offense report information expressly held to be public in *Houston Chronicle*, and, thus, such information is generally public). Thus, the basic information contained in a CAD report is not excepted from public disclosure under section 552.108. You indicate, however, that some of the information that may be subject to release as basic information in Exhibits 3-B, 3-D, 3-F, and 3-H is excepted from disclosure by common-law privacy. You claim that Exhibits 2-A, 2-B, and 3-J also contain information that is excepted under common-law privacy.

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. 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 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 established. *Id.* at 681-82. The type of information considered intimate or 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. You have not explained, nor can we discern, how the information in Exhibit 3-J or the basic information in Exhibits 3-D or 3-H is highly intimate or embarrassing; therefore, none of this information may be withheld under common-law privacy. We agree, however, Exhibit 2-A, portions of Exhibit 2-B, and portions of Exhibits 3-B and 3-F, which we marked, are highly intimate and embarrassing and not of legitimate public interest. Therefore, the center must withhold Exhibit 2-A and the marked portions of Exhibit 2-B under section 552.101 in conjunction with common-law privacy. In releasing basic information from Exhibits 3-B and 3-F, the center may not release the information we marked under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information in Exhibits 3-B, 3-D, 3-F, and 3-H, the center may withhold Exhibits 2, 3, 3-A, 3-B, 3-D, 3-F, and 3-H under section 552.108 of the Government Code. All of the basic information must be released from Exhibits 3-D and 3-H. In releasing basic information from Exhibits 3-B and 3-F, the center may not release the information we marked under section 552.101 in conjunction with common-law privacy. The remaining basic information in Exhibits 3-B and 3-F must be released. The center must withhold Exhibit 2-A and the information we marked in Exhibit 2-B under section 552.101 in conjunction with common-law privacy. The remaining information in Exhibit 2-B must be released. Exhibit 3-J must be released in its entirety.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 385420

Enc. Submitted documents

c: Requestor
(w/o enclosures)