



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2011

Ms. Jessica C. Eales
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-03775

Dear Ms. Eales:

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# 411464 (G.C. No. 18092).

The Houston Police Department (the "department") received a request for incident reports and supplements authored in drug cases by five named officers for a specified period of time. You state you are releasing some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code 552.108(a)(1). Generally, a governmental body claiming section 552.108 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). You state Exhibits 2, 3, and 5 relate to open and active criminal cases. Based upon this representation, we find release of Exhibits 2, 3, and 5 would interfere with the detection,

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Gov't Code §§ 552.301(e)(1)(D), .302; *see also* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

investigation, or prosecution of crime and, thus, section 552.108(a)(1) is applicable to this information. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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 Exhibit 4 pertains to a criminal investigation involving three suspects, two of whom were convicted or given deferred adjudication in connection with this matter. You also explain that the charges against the other individual were dismissed, and thus did not result in a conviction or deferred adjudication. You contend that the information relating to the convicted individuals 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 individuals 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 applicable to Exhibit 4.

We note section 552.108 does not except 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* and includes the names of the arresting and investigating officers. See 531 S.W.2d at 186-8; see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold Exhibits 2, 3, and 5 under section 552.108(a)(1) and Exhibit 4 under section 552.108(a)(2). However, you assert portions of the basic information must be withheld under section 552.151 of the Government Code.

Section 552.151 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.151. You seek to withhold the names and identification numbers of undercover officers you have marked. You represent that release of this information would subject these undercover officers to a "substantial threat of physical harm." Based on your representation, we conclude you have demonstrated that release of the information you have

marked would subject the officers to a substantial threat of physical harm. Therefore, we conclude the department must withhold the information you have marked under section 552.151 of the Government Code.

In summary, with the exception of basic information, the department may withhold Exhibits 2, 3, and 5 under section 552.108(a)(1) of the Government Code and Exhibit 4 under section 552.108(a)(2) of the Government Code.² In releasing basic information, the department must withhold the information you have marked under section 552.151 of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 411464

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We note basic information includes an arrestee's social security number. 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. Gov't Code § 552.147.