



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2011

Ms. Candice M. Gambrell
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-12057

Dear Ms. Gambrell:

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# 427597 (GC No. 18648).

The Houston Police Department (the "department") received a request for four categories of information relating to "tracking of mobile phones by the [department]." You inform us the department has released some of the requested information. You claim the rest of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.¹

Section 552.107(2) of the Government Code excepts information from public disclosure if "a court by order has prohibited disclosure of the information."² Gov't Code § 552.107(2). Article 18.20 of the Code of Criminal Procedure permits a court, on application by a prosecutor, to issue an order authorizing the interception of wire, oral, or electronic

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

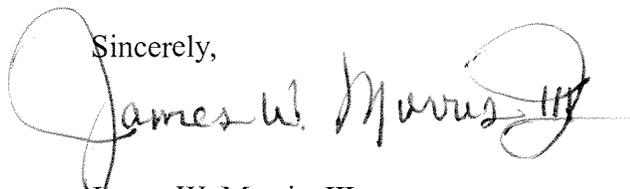
²This office will raise section 552.107(2) on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

communications; the installation or use of a pen register, ESN reader, trap and trace device, mobile tracking device, or similar equipment; or the disclosure of a stored communication, information subject to an administrative subpoena, or information subject to access under article 18.21 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 18.20 §§ 6, 9; *see also id.* § 1 (defining terms). Section 11 of article 18.20 states “[t]he judge shall seal each application made and order granted under this article.” *Id.* § 11. Article 18.21 of the Code of Criminal Procedure permits a court, on application by a prosecutor, to issue an order authorizing the installation and use of a pen register, ESN reader, trap and trace device, or similar equipment. *See* Crim. Proc. Code art. 18.21 § 2; *see also id.* § 1 (defining terms). Article 18.21 also permits a court to issue an order authorizing the disclosure of contents, records, or other information of a wire or electronic communication. *See id.* § 5. Section 2 of article 18.21 states the court “shall seal an application and order granted under this article.” *Id.* § 2(g). In this instance, the submitted documents consist of court orders granted under articles 18.20 and 18.21 and the corresponding applications for the orders. You state, and the orders and applications likewise reflect, that all the documents at issue are filed under seal. As the submitted documents have been sealed by a court pursuant to articles 18.20 and 18.21, we conclude the department must withhold the submitted documents under section 552.107(2) of the Government Code.³

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

³As we are able to make this determination, we need not address your claim under section 552.101 of the Government Code.

Ref: ID# 427597

Enc: Submitted documents

c: Requestor
(w/o enclosures)