

January 18, 1999

Ms. E. Cary Grace
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OR99-0122



OFFICE OF THE
ATTORNEY GENERAL
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Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 121177.

The City of Houston Police Department (the "department") received a request for "certified copies of any Houston Police Department records, reports, documents, statements, notes, computer data, or telephone records," concerning a specified individual.¹ In response to the request, you submit to this office for review a copy of the information at issue. You state that the "Police Department will make available to the requestor the Public Release Information portions of the requested incident reports."² However, you assert that the remaining information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹Generally, a request for all records of a named individual is a request for criminal history information ("CHRI"), which is confidential pursuant to the individual right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, in this instance, since the subject of the request was the complainant or a witness in the submitted offense reports, we conclude that CHRI is not implicated. In the future, we advise you to exercise caution in releasing information to the public, when the request is phrased in terms of "all records" concerning a particular individual. *See Gov't Code § 552.352.*

²As you have noted, basic information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public. *See Gov't Code § 552.108(c); 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); Open Records Decision No. 127 (1976).

Section 552.108, the "law enforcement," exception excepts from required public disclosure

(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;

(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; or

....

(c) This section does not except from the requirements of section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the responsive information, contained in Exhibit 2, concerns an investigation which is still open. Based on your representation, we find that release of the requested 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). Therefore, we conclude that, except for the front page information, the department may withhold Exhibit 2 from disclosure under section 552.108(a)(1).

As for the responsive information contained in Exhibit 3, you contend that the information is subject to section 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. In your brief to this office, you explain that "because the two year statute of limitations on the state's ability to initiate prosecution . . . has now run out," the investigation did not result in conviction or deferred adjudications. In reliance on your representation in support of the claimed exception, we conclude that you have met your burden of establishing the applicability of section 552.108(a)(2)

to the requested information. Although section 552.108(a) authorizes you to withhold the submitted information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 121177

Enclosures: Submitted documents

cc: Ms. Lori Arnoldy, Paralegal
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(w/o enclosures)