



September 28, 1999

Mr. M. Wade Sullivan
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR99-2731

Dear Mr. Sullivan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128410.

The City of Houston (the "city") received a request for twenty-six offense reports. You state that you will release eleven of the requested reports. You claim that the remaining fifteen requested reports are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The Office of the Attorney General will raise mandatory exceptions like sections 552.101 and 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We find that offense report number 119815595O consists of “files, reports, records, communications, audiotapes, videotapes, and working papers used or developed” in an investigation conducted under chapter 261 of the Family Code. *See* Fam. Code §§ 261.001(1)(C), 261.103(1). Thus, offense report number 119815595O is confidential under section 261.201(a) of the Family Code, and the city must withhold this report in its entirety.

With respect to the remaining offense reports, you assert that section 552.108 of the Government Code excepts the reports from public disclosure. Section 552.108 provides in part:

(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; [or]

(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[.]

* * *

(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.

First, you assert that section 552.108(a)(2) excepts the reports in Exhibit 2 from public disclosure. 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 inform us that the offense reports in Exhibit 2 relate to investigations that did not result in convictions or deferred adjudications. Because the reports at issue deal with the detection, investigation, or prosecution of crime that concluded in a final result other than a conviction or deferred adjudication, you may withhold the reports in Exhibit 2 under section 552.108(a)(2) of the Government Code.

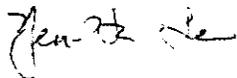
Next, you claim that section 552.108(a)(1) excepts the offense reports in Exhibit 3 from public disclosure. Generally, a governmental body claiming an exception under section

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 explain that the reports in Exhibit 3 concern investigations that are still open. You further state that although some of the investigations may be inactive, they remain open nonetheless in anticipation of new information or evidence. Based on your representations, we find that you have shown that release of the reports in Exhibit 3 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); Open Records Decision No. 216 (1978). We therefore conclude that section 552.108(a)(1) of the Government Code excepts these reports from required public disclosure. Although you may withhold Exhibits 2 and 3 from public disclosure, we note that you may choose to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

Finally, we find that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the 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). Thus, you must release the types of information that are considered to be front page offense report information from the reports in Exhibits 2 and 3, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); see Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

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.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL\nc

Ref: ID# 128410

Encl: Submitted documents

cc: Mr. Ramon Noyola
2000 Smith Street
Houston, Texas 77002
(w/o enclosures)