



December 21, 1999

Mr. John Steiner  
Division Chief  
Law Department  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR99-3688

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130596.

The City of Austin (the "city") received three requests for information related to a specified homicide investigation conducted by the city police department. You assert that the "first page" information related to this case has been released. We assume you refer to the "front page" information specified, and made 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). You claim that the balance of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. You have submitted responsive information to this office for review. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This provision encompasses information made confidential by statute. Section 58.007 of the Family Code, prohibits public disclosure of law enforcement records and files concerning a child. The statute governs records of juvenile conduct that occurred on or after September 1, 1997. You relate that two of the suspects under investigation were under the age of seventeen at the time of the December 1991 occurrence of the investigated incident. You must withhold the requested information related to these two individuals under section 552.101 of the Government Code Section in conjunction with 58.007 of the Family Code.

Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. If such interference is not apparent on the face of the submitted information, a governmental body claiming this exception must explain, how release of the information will interfere with detection, investigation, or prosecution of crime. We generally presume that section 552.108(a)(1) excepts from disclosure information that relates to a pending or ongoing

investigation or prosecution. 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). You relate that suspects have been arrested in this case and that prosecution is pending. You have also supplied statements from prosecuting attorneys requesting that information related to this case not be released. We conclude that you have demonstrated the applicability of section 552.108(a)(1) to the submitted information. Note however that "basic information" is not excepted by this section. Gov't Code 552.108(c). We believe such basic information refers to the "front page" 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). This information must be released except where it is made confidential (e.g. where Family Code section 58.007 is shown to apply). Other than front page information, and the information made confidential by section 58.007 of the Family Code, the submitted information may be withheld under section 552.108(a)(1) of the Government Code. As this decision is resolved by the above discussion, we will not address the other exceptions to the disclosure of the responsive information that you have raised.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/nc

Ref: ID# 130596

Encl: Submitted documents

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