



February 23, 2001

Ms. Tracy B. Calabrese
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-0670

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144519.

The City of Houston (the "city") received a request for copies of an Office of the Inspector General ("OIG") investigative report. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. You state that you are making available to the requestor the portions of the responsive information pertaining to suspects who were convicted as the result of the investigation. We have considered the exception you claim and reviewed the submitted information and submitted representative samples of information.¹

We have also reviewed the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments). We note that the requestor refers to section 552.023 of the Government Code which provides a special right of access to information held by a governmental body that relates to the person and is protected by laws intended to protect that person's privacy interests. However, section 552.108 protects the governmental body's law enforcement interests. *See* Open Records Decision No. 177 (1977). Accordingly, section 552.023 does not provide a special right of access to information excepted under section 552.108 of the Government Code.

You contend that portions of Exhibit 2 and Exhibits 3, 4, 5, 6, 7, 8, 9, and 10 are excepted from disclosure by section 552.108(a)(2) of the Government Code. 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* 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 that those records contain substantially different types of information than that submitted to this office.

conviction or deferred adjudication. You explain that several suspects were the subject of the OIG investigation. You state that two of the suspects were convicted, but that two suspects were no-billed by the grand jury and charges were dropped against other suspects. You have released information pertaining to the convicted suspects but, request to withhold information relating to the other suspects. Based on your arguments, we agree that the marked portions of Exhibit 2 and Exhibits 3, 4, 5, 6, 7, 8, 9, and 10 constitute information that deals with the detection, investigation, or prosecution of crime in relation to an investigation that did not result in conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

However, 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, with the exception of the basic front page offense and arrest information, you may withhold the marked portions of Exhibit 2 and Exhibits 3, 4, 5, 6, 7, 8, 9, and 10 from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

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

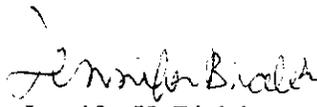
should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,


Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 144519

Encl: Submitted documents and videotape

cc: Mr. Orlando Sanchez
Council Member
City of Houston
City Hall Annex, 1st Floor
P.O. Box 1562
Houston, Texas 77251-1562
(w/o enclosures)