



November 20, 2001

Ms. Betsy Elam  
Attorney for the City of Haltom  
Taylor Olson Adkins Sralla & Elam  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2001-5360

Dear Ms. Elam:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155151.

The Haltom City Police Department (the "department"), which you represent, received a request for specified offense reports. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You have submitted as responsive information incident report numbers 0100051659 and 0100051663. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We have reviewed both incident reports you have submitted as responsive. It does not appear that they relate to the suspected abuse or neglect of a child and are therefore not within the scope of section 261.201 of the Family Code. Accordingly, the department may not withhold these incident reports from disclosure under section 552.101 of the Government Code as confidential by law. We will, however, address your arguments under section 552.108(a) for these reports.

You also assert that the responsive information may be withheld pursuant to section 552.108(a)(1) of the Government Code. Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming 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), 552.301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W. 2d 706 (Tex. 1977). You inform us that the requested information pertains to "cases pending in Johnson County District Court and presumptively would interfere with the detection, investigation and prosecution of crime." You also state that the information relates to "a criminal case that did not result in conviction or deferred adjudication, and that may still be under investigation." We conclude that the department may withhold the submitted report numbers 0100051659 and 01000516636 under section 552.108(a)(1) because release of these reports "would interfere with the detection, investigation, or prosecution of crime." *See Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W. 2d 177 (Tex. Civ. App. - Houston [14<sup>th</sup> 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).

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*. Thus, with the exception of the basic information, you may withhold the documents submitted as incident report numbers 0100051659 and 0100051663 from disclosure based on section 552.108(a)(1).

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).

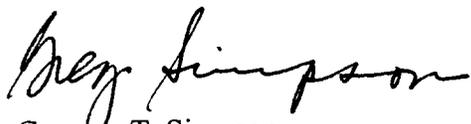
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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,



Gregory T. Simpson  
Assistant Attorney General  
Open Records Division

GTS/sdk

Ref: ID# 155151

Enc. Submitted documents

c: Mr. Keith Chandler  
7700 Virgie Court  
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(w/o enclosures)