



January 8, 2002

Ms. Mia Settle-Vinson  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77002

OR2002-0113

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157061.

The Houston Police Department (the "department") received a request for several incident reports. You state that you have released some of the requested information to the requestor. You also explain that there is no information regarding incident report numbers 016695198 and 079897498.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor seeks offense reports "in connection with the highlighted incidents on the enclosed spreadsheet." The copy of the spreadsheet that you have submitted, however, does not show which incident numbers were highlighted. Therefore, we assume that you have submitted information responsive to each of the incident numbers highlighted in the original request. To the extent you did not submit information responsive to any one of the incident numbers highlighted in the original request, we assume any such information has been released. If you have not released any such information, you must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302.

You assert that the information in Exhibit 37 is excepted from disclosure based on section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. 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

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<sup>1</sup> We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The information in Exhibit 37 involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the information in Exhibit 37 is confidential pursuant to section 58.007(c) of the Family Code. You must withhold the information in Exhibit 37 from disclosure under section 552.101 of the Government Code.

In regard to Exhibits 2, 3, 4, 5, 6, 7, 8, 10, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, and 55, you assert that the requested information is excepted from disclosure based on section 552.108(a)(1) of the Government Code. Section 552.108 of the Government Code 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). You inform us that the information in Exhibits 2, 3, 4, 5, 6, 7, 8, 10, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, and 55, pertains to pending criminal investigations. We therefore believe that the release of this information "would interfere with the detection, investigation, or prosecution of crime." *Id.*

In regard to Exhibits 9, 11, 12, 13, 18, 21, 32, 33, and 56, you assert that the requested information is excepted from disclosure based on section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Based

on the information you provided, we understand you to assert that the information in Exhibits 9, 11, 12, 13, 18, 21, 32, 33, and 56 pertain to cases that concluded in results other than 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 Company 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 information in Exhibits 2, 3, 4, 5, 6, 7, 8, 10, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, and 55, and Exhibits 9, 11, 12, 13, 18, 21, 32, 33, and 56 from disclosure based on section 552.108. 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.

However, we further note that certain front page offense report information in Exhibit 33 is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Accordingly, we have marked the types of basic information that you must withhold from Exhibit 33 pursuant to section 552.101 and common law privacy. You must release all other front page offense report information from Exhibit 33.

You also contend that the information in Exhibits 45 and 57 is excepted under section 552.108(a)(1). We note, however, that the maximum statute of limitations for the crimes alleged in Exhibits 45 and 57 is two years from the date of the commission of the offense. Code Crim. Proc. art. 12.02; *see also* Penal Code § 22.07. The offenses at issue in Exhibits 45 and 57 were committed more than two years prior to the department's receipt of the current request. You have not explained how or why release of this information would interfere with the investigation of offenses for which the statute of limitations has run. Thus, because you have not shown the applicability of section 552.108, we conclude that you may not withhold the information in Exhibits 45 and 57 under section 552.108.

We note that section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license issued by an agency of this state. Therefore, you must withhold the driver's license numbers we have marked in Exhibits 45 and 57 under section 552.130.

We also note that the social security number in Exhibit 45 may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security number and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in Exhibit 45 is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

To summarize, we conclude that: (1) the department must withhold the information in Exhibit 37 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; (2) with the exception of the basic front page offense and arrest information, the department may withhold the information in Exhibits 2, 3, 4, 5, 6, 7, 8, 10, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, and 55, and Exhibits 9, 11, 12, 13, 18, 21, 32, 33, and 56 from disclosure based on section 552.108; (3) the department must withhold the information we have marked in Exhibit 33 under section 552.101; (4) the department may not withhold the information in Exhibits 45 and 57 under section 552.108; (5) the department must withhold the driver's license numbers we have marked in Exhibits 45 and 57 under section 552.130; (6) prior to releasing the social security number in Exhibit 45, you should ensure that it was not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990; and (7) the remaining information in Exhibits 45 and 57 must be released.

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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 157061

Enc: Submitted documents

c: Mr. John Peissel  
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(w/o enclosures)