



January 22, 2002

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

OR2002-0299

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# 157564.

The City of Houston (the "city") received a request for copies of various incident reports. You state that you will release some specific responsive information to the requestor. You claim, however, that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that you state that the city police department has spoken with the requestor and is awaiting additional information from the requestor regarding item five of the request. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). You also state that the requestor has indicated to you that she will provide more particular information regarding this item of the request. We assume for purposes of this ruling that the city requested clarification regarding item five of the request within ten business days of the city's receipt of the request. Based on our review of all information that has been submitted to us, it does not appear, however, that the city has yet received the requested clarification. Thus, the city need not respond to this item of the request until it receives the requestor's clarification. We note, however, that when the city receives the clarification, you must seek a ruling from this office before withholding any of the information that may be responsive to item five of the request from disclosure. *See* Open Records Decision No. 663 (1999) (providing for tolling of ten business day deadline for requesting attorney general decision while governmental body awaits clarification).

Next, we note that you did not submit any responsive information to us pertaining to incident report number 12501899-F. We, therefore, presume that you have already provided the

requestor with this information to the extent that it exists. If not, you must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

We also note that the city failed to comply with the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides that a governmental body that requests an attorney general decision concerning a request for information must, within a reasonable time but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general a copy of the specific information requested or submit representative samples of the information if a voluminous amount of information was requested. *See* Gov't Code § 552.301(e)(1)(D). You state that the city police department will release offense report #049610897 to the requestor, "except for criminal history information." However, you did not provide us with the criminal history record information ("CHRI") from this report for our review.

When a governmental body fails to submit a copy of the specific information requested or representative samples of the specifically requested information, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must demonstrate a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is a demonstration that some other source of law makes the requested information confidential or that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). We note that we have no basis on which to conclude that the information that you have withheld from this offense report is excepted from disclosure under the Public Information Act, since the city did not submit the information to us for our review. Accordingly, we conclude that the city must release offense report #049610897 in its entirety. If you believe information contained within this offense report is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below. *See* Gov't Code § 552.324.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code.<sup>1</sup> Information must be withheld from disclosure under section 552.101 in conjunction with the common-law right to privacy when (1) the information is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685

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<sup>1</sup> 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 the common-law right to privacy.

(Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note that where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, a portion of the request requires the city to compile incident reports relating to a specified person. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the named individual's right to privacy to the extent that it includes arrests and investigations where the specified individual is a suspect in a case. Accordingly, we conclude that the city must withhold from disclosure all submitted incident reports in which a specified person is a suspect in a case pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (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[.]

Gov't Code § 552.108(a)(1), (2). You claim that exhibits two and three are excepted from disclosure pursuant to sections 552.108(a)(1) and that exhibits five through nine are excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution. Section 552.108(a)(2) protects records pertaining to a criminal investigation or prosecution that concluded in a final result other than conviction or a deferred adjudication. Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, 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 or prosecution. See Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that exhibits two and three pertain to open criminal investigations being conducted by the city police department and that the release of this information would interfere with the detection, investigation or prosecution of crime. Therefore, we conclude that the release of exhibits two and three would interfere with the detection, investigation, or prosecution of crime. You also state that exhibits five through nine pertain to criminal investigations that were either "cleared" by arrest, "closed," or "concluded" by the city police department. We,

thus, understand you to argue that exhibits five through nine pertain to cases that have concluded in a final result other than conviction or deferred adjudication.

We note that section 552.108 of the Government Code is inapplicable to basic information about an arrested person, an arrest, or a crime. *See* 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). *See* Open Records Decision No. 127 (1976) (summarizing the types of basic information that must be made available to the public). Accordingly, with the exception of basic information that is contained throughout exhibits two, three, and five through nine, the city may withhold exhibits two and three from disclosure pursuant to section 552.108(a)(1) and exhibits five through nine from disclosure pursuant to section 552.108(a)(2) of the Government Code. *See* Gov't Code § 552.108(a); *see also Houston Chronicle*, 531 S.W.2d 177 (court delineates law enforcement interests that are present in active cases).

In summary, the city need not respond to item five of the request until it receives clarification from the requestor regarding this item. We assume that the city has provided the requestor with incident report number 12501899-F to the extent that it exists. If not, it must do so at this time. The city must release offense report #049610897 to the requestor in its entirety. The city must withhold from disclosure all submitted incident reports in which a specified person is a suspect in a case pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. With the exception of basic information contained throughout exhibits two, three, and five through nine, the city may withhold exhibits two and three from disclosure pursuant to section 552.108(a)(1) and exhibits five through nine pursuant to section 552.108(a)(2) of the Government Code.

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

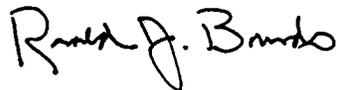
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 157564

Enc. Marked documents

cc: Ms. Sherry Scott Chandler  
The Hall Law Firm, LLP  
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(w/o enclosures)