



January 28, 2002

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2002-0391

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# 159739.

The Houston Police Department (the "department") received a request for several offense reports. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

In regard to Exhibits 2, 3, 4, and 7, 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, and 7 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 5, 6, and 9, 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 5, 6, and 9 pertains 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 offense and arrest information, the department may withhold the information in Exhibits 2, 3, 4, 5, 6, 7, and 9 from disclosure based on section 552.108.¹ 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.

You also contend that the information in Exhibit 8 is excepted under section 552.108(a)(1). We note, however, that the maximum statute of limitations for the crime alleged in Exhibit 8 is two years from the date of the commission of the offense. Code Crim. Proc. art. 12.02; *see also* Penal Code § 22.01. The offense at issue in Exhibit 8 was committed more than two years prior to the department's receipt of the present request. You have not explained how or why release of this information would interfere with the investigation of an offense for which the statute of limitations has run. Thus, because you have not shown the applicability of section 552.108, we conclude that the department may not withhold the information in Exhibit 8 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, the department must withhold the driver's license number we have marked in Exhibit 8 under section 552.130.

To summarize, we conclude that: (1) with the exception of the basic offense and arrest information, the department may withhold the information in Exhibits 2, 3, 4, 5, 6, 7, and 9 based on section 552.108; (2) the department must withhold the driver's license number we have marked in Exhibit 8 under section 552.130; and (3) the remaining information 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

¹As we are able to make this determination, we need not address the applicability of section 552.130 to the information in Exhibits 2, 3, 4, 5, 6, 7, and 9.

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# 159739

Enc: Submitted documents

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(w/o enclosures)