



March 18, 2002

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

OR2002-1314

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# 159882.

The City of Houston (the "city") received a request for information relating to (1) complaints filed by the requestor with the Citizen's Assistance Program downtown office and (2) reports made to the Houston Police Department of assaults against the requestor. You claim that some of the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.<sup>1</sup> We assume that the city has released any other responsive information that it holds or to which it has access. If not, then the city must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).

Section 552.108 of the Government Code, the "law enforcement exception," provides in relevant part:

(a) 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:

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

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<sup>1</sup>We note that the city also raised section 552.101 of the Government Code but has withdrawn its initial assertion of this exception to disclosure.

(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). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 applies to the information. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(1) is applicable to information that is shown to be related to a pending investigation or prosecution. Section 552.108(a)(2) is applicable to information relating to a concluded case that did not result in a conviction or a deferred adjudication.

You assert that sixteen responsive police reports are excepted from disclosure under section 552.108(a)(1). You represent to this office that these reports relate to open investigations. Based on your representation, we find that section 552.108(a)(1) is applicable to the reports submitted as Exhibits 2 through 17. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases). You state that eight other police reports relate to investigations that concluded in results other than a conviction or a deferred adjudication. Based on this representation, we find that section 552.108(a)(2) is applicable to the reports submitted as Exhibits 18 through 25.

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c); *see also Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976). You state that front-page offense report information will be provided to the requestor. Therefore, the city may withhold the rest of the submitted information under section 552.108(a)(1) and (2). We note that the city has discretion to release additional information that is not made confidential by law. *See* Gov't Code §§ 552.007, .101, .352; Open Records Decision No. 177 (1977). As section 552.108 is dispositive, we do not address section 552.130.

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).

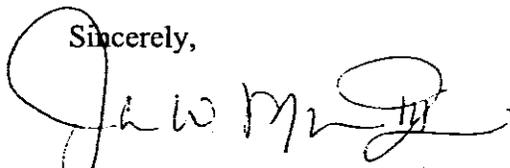
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in black ink, appearing to read 'J W Morris III', written in a cursive style.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 159882

Enc: Submitted documents

c: Mr. Joseph Young  
P.O. Box 15872  
Houston, Texas 77020  
(w/o enclosures)