



March 18, 2002

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2002-1319

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159887.

The Houston Police Department (the "department") received a request for numerous specified incident reports. You advise that you have released some of the information responsive to the request. We note that you have not submitted and have not objected to the release of the following reports: numbers 10114001, 101550601, 112216201, 140953100, 29181800, 31402700, 3274300, 35726500, 37620501, 37622301, 5649300, 70921600, and 85831901. If you have not released this information, you must do so at this time. *See Gov't Code §§ 552.301, .302.* You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are

¹In your initial brief to this office, you claim that the requested information is also excepted from required public disclosure under section 552.103 of the Government Code. In your brief dated January 15, however, section 552.103 is no longer claimed. Therefore, you have waived any claim of exception from disclosure under section 552.103 of the Government Code. Gov't Code §§ 552.301, .302.

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 incident reports submitted as Exhibits 2-5 and 7 include information involving juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, this information is confidential pursuant to section 58.007(c) of the Family Code. You must withhold this information from disclosure under section 552.101 of the Government Code. However, Exhibit 6 does not identify a juvenile suspect and therefore, it may not be withheld under section 552.101.

You claim that some information in Exhibit 8 is also excepted from disclosure under section 552.101. Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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. This office has also found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses; *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information pertaining to voluntary financial decisions and financial transactions that do not involve public funds, *see* Open Records Decision Nos. 600 (1992), 545 (1990). We have marked the information in Exhibit 8 that must be withheld under section 552.101 in conjunction with the common law right to privacy.

We note that Exhibit 8 contains Texas driver's license numbers. Section 552.130 of the Government Code prohibits the release of information that relates to a driver's license or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the Texas driver's license numbers that we have marked in Exhibit 8 under section 552.130.

In addition, a social security number contained within Exhibit 8 may be excepted from disclosure under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." A social security number may be excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Therefore, prior to releasing the marked social security number in Exhibit 8, you should ensure that it was not obtained or is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Further, you contend that Exhibits 9-21 are excepted from disclosure under section 552.108. Section 552.108(a)(1) 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." You inform us that Exhibits 9-18 pertain to cases in which investigations are currently open. We therefore believe that the release of this information "would interfere with the detection, investigation, or prosecution of crime." *Id.* You may withhold these reports under section 552.108(a)(1). Further, section 552.108(a)(2) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required disclosure if "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." You represent that the information in Exhibits 19-21 pertains to investigations that did not result in conviction or deferred adjudication. Therefore, you may withhold these reports under section 552.108(a)(2). While section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime under section 552.108(c), we find that you have released or will release basic information relating to the incident reports submitted as Exhibits 9-21.

In summary, you must withhold Exhibits 2-5 and 7 from disclosure in their entirety under section 552.101 in conjunction with section 58.007 of the Family Code. We have marked the information that must be withheld under section 552.101 and the right of common-law privacy in Exhibit 8. The driver's license numbers we have marked in Exhibit 8 must be withheld under section 552.130. The social security number which we have marked in Exhibit 8 may be confidential under section 552.101 and the federal Social Security Act. You may withhold Exhibits 9-21 under section 552.108, with the exception of basic information. The remaining requested 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 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 that reads "Kristen Bates". The signature is fluid and cursive, with the first name "Kristen" written in a larger, more prominent script than the last name "Bates".

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 159887

Enc. Submitted documents

c: Mr. Cary P. Decuir
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P.O. Box 842
Channelview, Texas 77530
(w/o enclosures)