



October 24, 2002

Mr. Dick H. Gregg, Jr.  
Gregg & Gregg  
16055 Space Center Blvd., Suite 150  
Houston, Texas 77062

OR2002-6022

Dear Mr. Gregg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171181.

The City of League City Police Department (the “department”), which you represent, received a request for “reports from incidents that took place on August 4, 02 . . . Assault[;] (Report) April late/June early - Terroristic threat [; and] February 4, 02 Assault.” You have not submitted the requested report regarding terroristic threat for our review. We therefore assume that you have released this information to the extent that it exists. If you have not released it, you must do so at this time. *See* Gov’t Code §§ 552.301(a), .302. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that the submitted information should be excepted in its entirety on the basis of constitutional privacy. Constitutional privacy under section 552.101 protects two kinds of interests. *See* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); *see also Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important decisions related to the “zones of privacy” that have been recognized by the United States Supreme Court and that include marriage, procreation, contraception, family relationships, and child rearing and education,. *See* Open Records Decision No. 455 at 3-7 (1987); *see also Fado v. Coon*, 633 F.2d 1172 (5<sup>th</sup> Cir. 1981). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See* Open Records Decision No. 455 at 6-7 (1987); *see also Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985), *reh’g denied*, 770 F.2d 1081 (1985). This aspect of constitutional privacy requires a balancing of the

individual's privacy interest against the public's interest in the information. *See* Open Records Decision No. 455 at 7 (1987). Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." Open Records Decision No. 455 at 8 (1987) (quoting *Ramie v. City of Hedwig Village*, 765 F.2d at 492).

You assert that the submitted reports should be withheld in their entirety because they "may detrimentally influence family relationships or child rearing, or may involve the most intimate aspects of human affairs" and argue that "the individual's right of privacy far outweighs the public's interest in disclosure of the information." We have considered your arguments and reviewed the information at issue. We conclude, however, that you have not shown that any part of these police incident reports comes within one of the constitutional zones of privacy or involves the most intimate aspects of human affairs. *See* Open Records Decision No. 408 at 10 (1984) (public has legitimate interest in information about individuals who are charged with crime); *see also* Open Records Decision No. 611 at 1 (1992) ("An assault by one family member on another is a crime, not a family matter normally considered private."). We therefore find that none of the submitted information may be withheld on the basis of constitutional privacy.

You also assert that the submitted reports may be withheld pursuant to section 552.108 of the Government Code. Section 552.108(a)(2) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . (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." A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the submitted reports pertain to closed criminal cases that did not result in conviction or deferred adjudication. Based on your representation, and having reviewed the information at issue, we agree that section 552.108(a)(2) of the Government Code is applicable to these incident reports.

We note, however, that information normally found on the front page of an offense or incident report is generally considered public. *See generally* Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976). Thus, the department must release the types of information that are considered to be front page report information, even if this information is not actually located on the front page of the report. *See* Open Records Decision No. 127 (1976) (summarizing types of information that must be released pursuant to holding in *Houston Chronicle*). Although section 552.108 authorizes the department to withhold the remaining information from the incident reports, you may choose to release all or part of the information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

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).

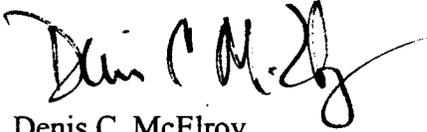
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 "Denis C. McElroy". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 171181

Enc. Submitted documents

c: Ms. Tina McSweeney  
1723 19<sup>th</sup> St. NW  
Rochester, MN 55901  
(w/o enclosures)