



December 2, 2002

Mr. Brad Norton
Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767-8845

OR2002-6841

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172964.

The Austin Police Department (the “department”) received a request for incident report numbers 02-1750391, 02-1750974, and 02-1780981, as well as all incident reports concerning a named individual and/or a particular address since August 31, 2001. You claim that the requested 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.

Initially, we note that you did not submit incident report numbers 02-1750391 and 02-1750974 for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent incident report numbers 02-1750391 and 02-1750974 exist, we assume that you have released those reports to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See Gov’t Code §§ 552.301(a), .302.*

In regard to case number 02-1780981, 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 requested information pertains to a pending case. We therefore believe that the release of case number 02-1780981 “would interfere with the detection, investigation, or prosecution of crime.” *Id.*

In regard to case numbers 02-1400609, 02-2001502, 02-2081537, and 02-2221094, 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 requested information pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to case numbers 02-1400609, 02-2001502, 02-2081537, and 02-2221094.

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), which includes a detailed description of the offense. Thus, with the exception of the basic offense and arrest information, you may withhold case numbers 02-1780981, 02-1400609, 02-2001502, 02-2081537, and 02-2221094 from disclosure based on section 552.108. 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.

However, we further note that certain front page offense report information in case numbers 02-1780981, 02-1400609, 02-2001502, and 02-2221094 is excepted from disclosure under section 552.101 in conjunction with common-law privacy.¹ The doctrine of common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (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. Accordingly, we have marked the types of basic information that you must withhold from case numbers 02-1780981, 02-1400609, 02-2001502, and 02-2221094 pursuant to section 552.101 and common-law privacy. You must release all other front page offense report information from case numbers 02-1780981, 02-1400609, 02-2001502, and 02-2221094.

Finally, 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 Comm. for Freedom of the*

¹Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Press, 489 U.S. 749 (1989). In this instance, the requestor asks for all information concerning a certain person. In this case, we believe that the individual's right to privacy has been implicated. Thus, where the named individual is a possible suspect, we conclude that the department must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.*

To summarize, we conclude that: (1) with the exception of the basic offense and arrest information, the department may withhold case numbers 02-1780981, 02-1400609, 02-2001502, 02-2081537, and 02-2221094 from disclosure based on section 552.108; (2) the department must withhold basic information we have marked in case numbers 02-1780981, 02-1400609, 02-2001502, and 02-2221094 under section 552.101 in conjunction with common-law privacy; and (3) the department must withhold any other reports that reference the named individual as a suspect pursuant to section 552.101 in conjunction with the common-law right to privacy. The remaining submitted information must be released to the requestor.

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/lmt

Ref: ID# 172964

Enc: Submitted documents

c: Mr. Nelson H. Mock
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(w/o enclosures)