



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 11, 2002

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

OR2002-7057

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# 173445.

The Houston Police Department (the "department") received a request for information regarding the department's crime lab. You state that some of the requested information will be released to the requestor. You claim, however, that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.122 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that the information in Exhibit 3 consists of juvenile law enforcement records. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part as follows:

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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.

We note that section 58.007 applies to information that involves a juvenile suspect or offender, but does not apply where the information in question involves only a juvenile complainant or witness. Upon review, we note that the documents provided in Exhibit 3 identify three individuals as criminal suspects. Two of these suspects were not juveniles at the time of the offenses at issue. You do not indicate, nor do the documents reflect, that the third suspect identified in Exhibit 3 was a juvenile at the time of the offenses. Accordingly, we cannot find from the information provided that Exhibit 3 is confidential pursuant to section 58.007 of the Family Code.

You also contend that Exhibit 3 is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the documents in Exhibit 3 relate to open criminal investigations. Based upon this representation, we determine that the release of Exhibit 3 would interfere with the detection, investigation, or prosecution of crime. *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).

We note, however, that basic information about a crime or arrest 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) (summarizing types of information considered to be basic information). Generally, the identity of the complainant is included in basic information and may not be withheld from public disclosure. However, information tending to identify victims of serious sexual offenses must be withheld from public disclosure pursuant to section 552.101 of the Government Code because such information is protected by common-law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). 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 right of privacy, however, is purely personal and lapses upon death. See *Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.--Texarkana 1979, writ ref'd n.r.e.); see also Attorney General Opinions JM-229 (1984); H-917 (1976). Exhibit 3 pertains to investigations of sexual assault. However, the sexual assault victims identified in Exhibit 3 are deceased. Thus, we determine that these individuals' privacy rights in the information have lapsed. Accordingly, the department may not withhold the identities of sexual assault victims in Exhibit 3 under common-law privacy.

Although you do not raise section 552.108 with respect to Exhibit 2, you inform us that Exhibit 2 also pertains to an investigation of sexual assault. The department must withhold the identifying information we have marked in Exhibit 2 pursuant to section 552.101 and common-law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

You contend that the information in Exhibit 4 is excepted from disclosure under section 552.122 of the Government Code. Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; see also Open Records Decision No. 118 (1976). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). See Open Records Decision No. 626 at 8 (1994). You advise that Exhibit 4 is a representative sample of a test administered to department laboratory personnel to measure their knowledge of forensic biology and proficiency in applying the proper techniques. Based on your representation and our review, we agree that section 552.122 applies to the information in Exhibit 4. Accordingly, the department may withhold Exhibit 4 pursuant to section 552.122(b) of the Government Code.

Finally, section 552.130 of the Government Code excepts Texas motor vehicle license and registration information from disclosure. Upon review, we find that the submitted documents do not contain any Texas motor vehicle information. Therefore, none of the submitted information can be withheld under section 552.130.

In summary, with the exception of basic information, the department may withhold Exhibit 3 pursuant to section 552.108(a)(1) of the Government Code. Although section 552.108(a)(1) authorizes the department to withhold the information from disclosure, you may choose to release all or part of Exhibit 3 that is not otherwise confidential by law. See Gov't Code § 552.007. The department must withhold the identifying information we have marked in Exhibit 2 pursuant to section 552.101 and common-law privacy. The department may withhold Exhibit 4 under section 552.122 of the Government Code. The remainder of the 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 173445

Enc: Submitted documents

c: Mr. David Raziq  
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(w/o enclosures)