



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 31, 2003

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

OR2003-9408

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# 193444.

The City of Houston Police Department (the "department") received a request for information regarding a complaint filed by the requestor on October 9, 2002 and any information leading up to this complaint. You state that the department will release some of the responsive information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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). When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). The present request asks for the "criminal histories" and "arrest records" of all parties concerned. We determine that this request implicates the individuals' rights to

privacy. Thus, we conclude that you must withhold the requested information in Exhibit 5 under common-law privacy as encompassed by section 552.101 of the Government Code. *See Id.*

We find that Exhibit 4 constitutes a compilation of the requestor's criminal history record. Although, the release of this information would normally implicate the requestor's common-law right to privacy pursuant to *Reporters Committee*, we note that the requestor has a special right of access to this information pursuant to section 552.023 of the Government Code. Section 552.023 gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See Gov't Code § 552.023.* Therefore, we conclude that the department may not withhold the information found in Exhibit 4 under section 552.101 of the Government Code in conjunction with the common-law right to privacy and *Reporters Committee*.¹

You also raise section 552.101 in conjunction with sections 143.089(g) and 143.1214 of the Local Government Code. Section 143.1214 provides in part:

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department's use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

- (1) to another law enforcement agency or fire department;
- (2) to the office of a district or United States attorney; or
- (3) in accordance with Subsection (c).

(c) The department head or the department head's designee may forward a document that relates to a disciplinary action against a fire fighter or police officer to the [civil service] director or the director's designee for inclusion in the fire fighter's or police officer's personnel file maintained under Sections 143.089(a)-(f) [of the Local Government Code] only if:

¹ We note that although Exhibit 4 contains the Texas driver's license number and social security of the requestor, the requestor has a special right of access to this information under section 552.023. Therefore, we will not address the confidentiality of the social security number or your section 552.130 claim to this information.

- (1) disciplinary action was actually taken against the fire fighter or police officer;
- (2) the document shows the disciplinary action taken; and
- (3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

Local Gov't Code § 143.1214(b)-(c). You state that the IAD Investigation file found in Exhibit 6 contains a sustained allegation of misconduct against a civilian employee, who was disciplined, as well as allegations of misconduct against a police officer, who was exonerated of all allegations. You state that the IAD Investigation is maintained in a file created by the department for its own use and is not held in personnel files maintained under section 143.089(a) of the Local Government Code. You also represent that this information does not meet the conditions specified by section 143.1214(c) for inclusion in a police officer's civil service file. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(f). Based on your representations, we conclude that the submitted information in Exhibit 6 is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. *See also* Open Records Decision No. 642 (1996) (concluding that files relating to investigations of Houston Fire Department personnel by Public Integrity Review Group of Houston Police Department were confidential under Loc. Gov't Code § 143.1214).

We now address your section 552.108 of the Government Code arguments for the information found in Exhibits 2 and 3. Section 552.108 provides in pertinent 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]
- (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[.]

Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. 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 criminal investigation found in Exhibit 3 relates to a case that is "inactive pending additional leads." You state that the statute of limitations has not run and that the investigation "may be reactivated once additional leads are developed." Based on

your assertions and a review of this information, we believe that release of this information “would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Accordingly, you may withhold the report found in Exhibit 3 from public disclosure.

You claim that the report found in Exhibit 2 should be excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. 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 investigation concluded in a determination by [the department] to discontinue the investigation due to the complainant’s failure to pursue charges in this matter.” Thus, the investigation did not result in conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the report found in Exhibit 2 and the information may be excepted from disclosure.

We note, however, that 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 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold the reports found in Exhibits 2 and 3 of the submitted information. 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.

In summary, you must withhold any records that lists the named individual, other than the requestor, as a suspect, arrestee, or offender under section 552.101 of the Government Code and *Reporters Committee*. The information found in Exhibit 6 is excepted from disclosure under section 552.101 in conjunction with section 143.1214 of the Local Government Code. With the exception of basic information, the report found in Exhibit 2 is excepted from disclosure under section 552.108(a)(2) and the report found in Exhibit 3 is excepted from disclosure under section 552.108(a)(1). The remaining 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 Dep't of Pub. 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/sdk

Ref: ID# 193444

Enc. Submitted documents

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(w/o enclosures)