



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2004

Ms. Carla S. Cook
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2004-5927

Dear Ms. Cook:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204454.

The City of Fort Worth (the "city") received a request for information pertaining to nuisance abatement cases under criminal investigation that relate to multiple-family properties located "within the Woodhaven NEZ." You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative samples of information,² as well as your response to our letter of July 2, 2004, seeking additional information required for our decision. *See* Gov't Code § 552.303 (providing for attorney general request for submission of additional information attorney general determines is necessary to render decision). We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that member of public may submit comments stating why information should or should not be released).

¹Although you raise section 552.103 of the Government Code as an exception to disclosure, you did not submit to this office written comments stating the reasons why section 552.103 would allow the information to be withheld. Thus, we assume that you no longer claim this exception. *See* Gov't Code §§ 552.301, .302.

²We assume that the "representative samples" 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 ruling 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.

You assert that Exhibit C is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information made confidential by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The information at issue was used or developed in an investigation of child abuse. Thus, we find that the information is within the scope of section 261.201 of the Family Code. You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold Exhibit C in its entirety under section 552.101 as information made confidential by law.³

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 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 remaining submitted information relates to ongoing criminal investigations. Based on your representations and our review, we determine that the release of the remaining submitted information 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).

³As we are able to make this determination, we do not reach your remaining arguments against the disclosure of Exhibit C.

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that basic arrest information includes the name of the arresting officer, the place of arrest, the location of the crime, and premises involved. See *Houston Chronicle*, 531 S.W.2d at 184-85; ORD 127.

You assert that some basic information should not be released. In Open Records Decision No. 169 (1977), this office recognized that information that would ordinarily be subject to disclosure may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy on a showing of "special circumstances."⁴ This office considers such "special circumstances" to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." Open Records Decision No. 169 at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* Having considered your arguments and the submitted information, we find that the city must withhold basic information that identifies undercover police officers under section 552.101 on the basis of special circumstances. However, the remaining basic information must be released. The city may withhold the remaining information at issue under section 552.108(a)(1).⁵ We note that you have the discretion to release any part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the city must withhold Exhibit C under section 552.101 in conjunction with section 261.201 of the Family Code. Other than basic information, the city may withhold the remaining submitted information under section 552.108(a)(1). Basic information that identifies undercover police officers must be withheld pursuant to section 552.101; the remaining basic 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

⁴Section 552.101 also encompasses the doctrine of common-law privacy.

⁵As our ruling is dispositive, we do not address your remaining arguments against disclosure.

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,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 204454

Enc. Submitted documents

c: Mr. Louis A. McBee
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