ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2005

Mr. Asem Eltiar
Assistant City Attorney
Arlington Police Department
P.O. Box 1065 - Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2005-08013

Dear Mr. Eltiar:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 231172.

The Arlington Police Department (the "department") received a request for information relating to complaints of domestic abuse at a specified address. 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 have reviewed the information you submitted.

Section 552.108 of the Government Code excepts from public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You indicate that the information submitted as Exhibit B relates to pending and open cases. Based on your representation and our review of the information in question, we find that section 552.108(a)(1) is applicable to Exhibit B. *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).

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the information in Exhibit B under section 552.108(a)(1).

We note that section 552.147 of the Government Code[1] provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. The department must withhold the social security number of the arrested person in Exhibit B under section 552.147.[2]

You also raise section 552.101 of the Government Code. This section excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In Open Records Decision No. 393 (1983), this office concluded that although generally only information that either identifies or tends to identify a victim of a sexual offense must be withheld from the public under section 552.101 in conjunction with common law privacy, the governmental body was required to withhold the entire police report, because the identifying information was inextricably intertwined with other releasable information. *See id.* at 2 (1983); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information, and public did not have legitimate interest in such information); Open Records Decision Nos. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld), 339 (1982) (information that would identify victim of aggravated sexual abuse must be withheld).

You contend that all of the information in Exhibit C must be withheld under section 552.101 in order to protect the crime victim's right to privacy. We note, however, that the requestor was the victim of the offense to which Exhibit C pertains. The requestor has a special right of access to information that would be excepted from public disclosure to protect her privacy

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[1]Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

[2]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

interests. *See* Gov't Code § 552.023.[3] The department may not withhold such information from the requestor on privacy grounds under section 552.101 of the Government Code. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, the department may not withhold any of the information in Exhibit C under section 552.101 in conjunction with common law privacy.

Nevertheless, Exhibit C contains a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state.[4] *See* Gov't Code § 552.130(a)(1). The department must withhold the Texas driver's license number under section 552.130.

In summary: (1) except for the basic information that must be released under section 552.108(c), the department may withhold the information in Exhibit B under section 552.108(a)(1) of the Government Code; (2) the department must withhold the arrested person's social security number in Exhibit B under section 552.147; and (3) the Texas driver's license number in Exhibit C must be withheld under section 552.130. The rest of the submitted information must be released.[5]

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

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[3]Section 552.023(a) provides that "[a] person or a person's authorized representative has 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 public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

[4]Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 on behalf of a governmental body, as it is a mandatory exception and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

[5]Should the department receive another request for these same records from a person who would not have a right of access to private information, the department should resubmit these same records and request another decision. *See* Gov't Code §§ 552.301, .302.

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

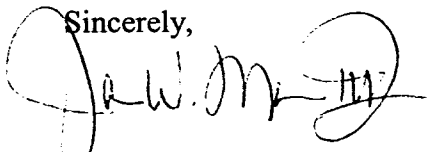
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 231172

Enc: Submitted documents