



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2006

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston
Legal Department
P. O. Box 1562
Houston, Texas 77251-1562

OR2006-01252

Dear Mr. Gambrell:

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# 241759.

The Houston Police Department (the "department") received a request for any information, pictures, and reports related to a specified homicide investigation. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information contains court-filed documents. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, under section 552.022, these court-filed documents must be released unless they are confidential under other law. Although you claim this information is excepted under section 552.108, that section is a discretionary exception under the Act and is, therefore, not "other law" that makes information confidential. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to

¹We 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.

section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). However, you also raise section 552.101 as a possible exception to disclosure. This exception constitutes other law for purposes of section 552.022. Therefore, we will consider the applicability of section 552.101 to the court-filed documents, as well as the remaining 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” and encompasses information made confidential by statute. Gov’t Code § 552.101. 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, 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); *see also* Open Records Decision No. 440 at 2 (1986) (addressing statutory predecessor). Upon review, we find that the court-filed documents subject to section 552.022 consist of files, reports, records, communications, or working papers used or developed in an investigation of abuse or neglect under chapter 261 of the Family Code. Thus, this information is within the scope of section 261.201 of the Family Code. You state that the department has not adopted a rule that governs the release of this type of information. Accordingly, we conclude that the department must withhold the court-filed documents, which we have marked, pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No 440 at 2 (1986) (applying predecessor statute). However, upon review of the remaining submitted information, we find that this information was not used or developed in an investigation of child abuse under chapter 261 because it relates to a capital murder investigation. Thus, we conclude that the remaining submitted information is not confidential under section 261.201 of the Family Code and may not be withheld under section 552.101 on that basis.

We now turn to your claim under section 552.108 of the Government Code with respect to the remaining submitted information. Section 552.108(a) 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 requested information relates to a pending criminal case. Based upon this representation, we conclude that the release of the remaining 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).

However, 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). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front page offense and arrest information, the department may withhold the remaining submitted information from disclosure based on section 552.108(a)(1). We note that the department has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the department must withhold the court-filed documents, which we have marked, pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. Except for basic information, the department may withhold the remaining submitted information pursuant to section 552.108 of the Government Code.²

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, 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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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); *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 Office of the Attorney General 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. 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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 241759

Enc. Submitted documents

c: Ms. Toya Gibson
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(w/o enclosures)