



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2006

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 770251-1562

OR2006-01311

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# 242012.

The Houston Police Department (the "department") received a request for information relating to incidents involving two named individuals. You state that you will release some of the information to the requestor. You claim that the submitted 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 information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision, and 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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 U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993).

In the present request, the requestor asks for all police records regarding two named individuals. We determine that the request for police records regarding the two named individuals implicates these individuals' rights to privacy. Some of the submitted offense

reports make reference to one of the named individuals as a victim or complainant, and not as a criminal suspect, arrestee, or defendant. This information is not part of the compilation of this individual's criminal history and may not be withheld under section 552.101 and *Reporters Committee*. However, to the extent the city maintains law enforcement records depicting the individuals at issue as suspects, arrestees, or criminal defendants, the city must ordinarily withhold such information pursuant to section 552.101 in conjunction with common-law privacy in accordance with the decision in *Reporters Committee*. We note, however, that the requestor has a special right of access to the information pertaining to her client 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 find that no portion of the submitted information is protected from disclosure under the common-law right to privacy. Accordingly, we conclude that the department may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with the common-law right to privacy on the basis of the decision in *Reporter's Committee*.

Next, you claim that portions of the submitted information should be withheld from disclosure pursuant to section 552.108. Section 552.108 of the Government Code provides in relevant 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;
- (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[.]

Gov't Code § 552.108(a). 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), (a)(2), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit 3 is an inactive criminal investigation for which "the statute of limitations has not run" and that "may be reactivated once additional leads are developed." Based upon your representations, we conclude that the release of Exhibit 3 would interfere with the detection, investigation, or prosecution of crime. We therefore agree that section 552.108(a)(1) is applicable to this information. 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). You also state

that Exhibit 5 pertains to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibit 5.

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*. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic front page offense and arrest information, you may withhold from disclosure Exhibits 3 and 5 under section 552.108 of the Government Code. We note that you have the discretion to release all or part of the remaining information in these exhibits that is not otherwise confidential by law. Gov't Code § 552.007.

The remaining submitted information contains a driver's license number. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130. You must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code.

The remaining submitted information also contains a social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the social security number we have marked in the submitted information under section 552.147 of the Government Code.¹

In summary, with the exception of the basic front page offense and arrest information, you may withhold from disclosure Exhibits 3 and 5 under section 552.108 of the Government Code. You must withhold the Texas driver's license number we have marked under

¹We 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.

section 552.130 of the Government Code. The department must withhold the social security number we have marked in the submitted information under section 552.147 of the Government Code. The remaining submitted information must be released to the requestor.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 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.

²Some of the documents marked for release contain or consist of confidential information that is not subject to release to the general public. See Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or her authorized representative, the department should again seek our decision.

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,

A handwritten signature in black ink, appearing to read "James Forrest". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

James Forrest
Assistant Attorney General
Open Records Division

JF/er

Ref: ID# 242012

Enc. Submitted documents

c: Ms. Kristin Wilkinson
The Wilkinson Law Firm
1717 St. James Place, Suite 330
Houston, Texas 77056
(w/o enclosures)