



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2007

Mr. Yushan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2007-07233

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# 280490.

The Houston Police Department (the "department") received a request for 59 specified incident reports. 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.¹

Section 552.108 of the Government Code 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;

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.

(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 Exhibits 2, 4, 5, 6, 8, and 9 relate to pending criminal prosecutions and that Exhibits 3 and 7 relate to criminal investigations that are pending. Thus, based on your representations and our review, we determine that the release of Exhibits 2, 3, 4, 5, 6, 7, 8, and 9 would interfere with the detection, investigation, or prosecution of crime. We, therefore, agree that section 552.108(a)(1) is applicable to these exhibits. 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 advise us that Exhibits 10, 12, and 14 pertain to cases that concluded in a final result other than conviction or deferred adjudication. We, therefore, agree that section 552.108(a)(2) applies to Exhibits 10, 12 and 14. Next, you state that Exhibit 13 pertains to an investigation that is inactive pending additional leads. We note however that Exhibit 13 is an investigation of a motor vehicle burglary. The events that gave rise to this investigation occurred on March 5, 2003. The longest possible statute of limitations for the offense described in this report is two years. See Pen. Code § 30.04(d) (burglary of motor vehicle is Class A misdemeanor); Crim. Proc. Code art. 12.01(6) (indictment or information on misdemeanor may be presented within two years from date of commission of offense, and not afterward). More than two years has elapsed since the events giving rise to the investigation in Exhibit 13 and you have not informed this office that any criminal charges were filed within the limitations period in this case. Furthermore, you have not otherwise explained how release of this report would interfere with the detection, investigation, or prosecution of crime. Thus, section 552.108(a)(1) is not applicable to Exhibit 13.

With respect to Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 14 we note 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). Such basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). However, because Exhibit 4 pertains to an alleged sexual assault, certain basic information from this exhibit may be excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.² Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly

²Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Accordingly, we have marked the information in Exhibit 4 that is protected by common-law privacy and cannot be released as basic information. All basic information from Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 14 must be released. The remaining information in these exhibits may be withheld under section 552.108.

You also argue that some of the information in Exhibit 11 is excepted from disclosure under section 552.101 in conjunction with common-law privacy. Upon review, we have marked the information in Exhibit 11 that must be withheld under section 552.101 in conjunction with common-law privacy.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides in part:

(a) Information is excepted from the requirements 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; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a). The department must withhold the Texas motor vehicle record information that we marked in Exhibits 11 and 13 under section 552.130 of the Government Code.

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. *Id.* § 552.147. Therefore, the department may withhold the social security numbers you have marked pursuant to section 552.147 of the Government Code.³

In summary, except for basic information, you may withhold Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, and 14 pursuant to section 552.108 of the Government Code. You must withhold the

³Section 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. Gov't Code § 552.147(b).

information we have marked from the basic information in Exhibit 4 and the information in Exhibit 11 under section 552.101 of the Government Code in conjunction with common-law privacy. You must also withhold the Texas motor vehicle record information marked in Exhibits 11 and 13 under section 552.130 of the Government Code. You may withhold the social security numbers you have marked under section 552.147. The remaining 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 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).

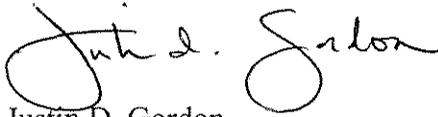
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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.

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 that reads "Justin D. Gordon". The signature is written in a cursive style with a large, looped initial "J".

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/mcf

Ref: ID# 280490

Enc. Submitted documents

c: Mr. Andrew Payne
Law Offices of Payne & Payne & Associates
7100 Regency Square Boulevard, Suite 250
Houston, Texas 77036
(w/o enclosures)