



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2008

Ms. Yushan Chang
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2008-02035

Dear Ms. Chang:

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# 301993.

The Houston Police Department (the "department") received a request for eight specified police reports. You state the one of the police reports has been made available 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 552.108 provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]
- (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)(1)-(2). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

In this instance, you state that Exhibit 2 relates to an investigation that is inactive pending additional leads. You further state that the statute of limitations has not run and that the investigation may be reactivated once additional leads are developed. However, we note that Exhibit 2 consists of an offense report pertaining to an alleged aggravated sexual assault that occurred in 1990. The statute of limitations for the offense listed in the report is ten years from the date of the commission of the offense. Code Crim. Proc. arts. 12.01(2)(E) (limitations on sexual assault is ten years from the date of the offense), 12.03(d) (any offense that bears the title "aggravated" carries same limitation period as primary crime). More than ten years has elapsed since the events giving rise to the investigation in Exhibit 2. You have not informed this office that any criminal charges were filed within the limitations period in this case. Furthermore, you have not explained how release of this exhibit would interfere with the detection, investigation, or prosecution of an offense for which the statute of limitations has run. Thus, we find that you have not demonstrated the applicability of section 552.108(a)(1) to Exhibit 2. Accordingly, the department may not withhold this exhibit under section 552.108(a)(1).

Next you state that Exhibits 3, 4, 5, 6, 7, and 8 pertain to criminal investigations that concluded in final results other than conviction or deferred adjudication. Accordingly, we agree that section 552.108(a)(2) is applicable to Exhibits 3, 4, 5, 6, 7, and 8.

With respect to Exhibits 3 through 8, 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). Basic information refers to information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes the identification and description of the complainant. *See Houston Chronicle*, 531 S.W.2d at 187; ORD 127 (1976).

We now address your argument under common-law privacy for portions of the basic information to be released and for Exhibit 2. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication

of which would be highly 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 type 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. Information that either identifies or tends to identify a victim of sexual assault must be withheld under common-law privacy. See Open Records Decisions Nos. 393 (1983), 339 (1982). We have marked the information in the basic information that identifies the sexual assault victims in Exhibits 3, 5, 6, 7, and 8. As we stated earlier, Exhibit 2 relates to an aggravated sexual assault investigation, which contains the identifying information of the victim. Thus, the department must withhold the information that we have marked in Exhibit 2, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the information that we have marked in Exhibit 2 and the basic information we have marked in exhibits 3, 5, 6, 7, and 8 pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the remaining basic information, which must be released, the department may withhold Exhibits 3, 4, 5, 6, 7, and 8 under section 552.108(a)(2) of the Government Code. The remaining information in Exhibit 2 must be released to the requestor.¹

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 challenge 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,



Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/mcf

Ref: ID# 301993

Enc. Submitted documents

c: Ms. Kathy Loving
2926 Veva Drive
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(w/o enclosures)