



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 28, 2008

Ms. Candice M. De La Garza  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2008-02734

Dear Ms. De La Garza:

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# 303757.

The Houston Police Department (the "department") received a request for eighteen specified incident reports. You state that the department will release basic information to the requestor. *See* Open Records Decision No. 127 (1976) (summarizing basic information). You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we address your claims under section 552.108 of the Government Code, as it is potentially the broadest exception to disclosure you claim. Section 552.108(a)(1) of the Government Code 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)

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<sup>1</sup>We 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.

release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that Exhibits 3, 4, 5, 7, 10, 11, 12, and 14 relate to pending criminal investigations. However, we note that Exhibits 10 and 14 relate to alleged misdemeanor charges of theft. An indictment or information for any misdemeanor must be presented within two years from the date of the commission of the offense. *See* Crim. Proc. Code art. 12.02. With regard to Exhibits 10 and 14, you have neither informed this office that any criminal charges were filed within the limitations period nor have you explained how release of the information would interfere with the detection, investigation, or prosecution of offenses for which the statutes of limitations has run. Thus, the department has not shown the applicability of section 552.108(a)(1) to Exhibits 10 or 14. However, based upon your representations and our review of Exhibits 3, 4, 5, 7, 11, and 12 we conclude that the release of this 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).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming 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. You state that Exhibits 2, 8, 9, and 13 pertain to criminal investigations that concluded in final results other than conviction or deferred adjudication. Upon review, we agree that section 552.108(a)(2) applies to Exhibits 2, 8, 9, and 13.

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 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). Thus, with the exception of basic information, which you state you will release, the department may withhold Exhibits 3, 4, 5, 7, 11, and 12 pursuant to section 552.108(a)(1), and Exhibits 2, 8, 9, and 13 pursuant to section 552.108(a)(2).<sup>2</sup>

You claim that the remaining information contains criminal history information that is excepted from disclosure under common-law privacy. Section 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. This section

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining arguments for this information.

encompasses the doctrine of common-law privacy, which 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. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of this test must be established. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. Cf. *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We have marked information in Exhibit 6 that the department must withhold under section 552.101 in conjunction with common-law privacy.

Section 552.130 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[, ] a motor vehicle title or registration issued by an agency of this state[, or ] a personal identification document[.]" Gov't Code § 552.130. The department must withhold the Texas motor vehicle record information that we have marked in Exhibit 6 under section 552.130 of the Government Code. We note that section 552.130 does not protect out-of-state motor vehicle record information.

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136. The department must withhold the information we have marked in Exhibit 14 under section 552.136 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. We agree that the department may withhold the submitted social security numbers pursuant to section 552.147 of the Government Code.<sup>3</sup>

In summary, with the exception of basic information, the department may withhold Exhibits 3, 4, 5, 7, 11, and 12 pursuant to section 552.108(a)(1) of the Government Code and Exhibits 2, 8, 9, and 13 pursuant to section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked in Exhibit 6 under

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<sup>3</sup>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.

section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The department must withhold the information we have marked in Exhibit 14 pursuant to section 552.136 of the Government Code. The department may withhold the submitted social security numbers pursuant to section 552.147 of the Government Code. The remaining information must be released to the requestor.

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).

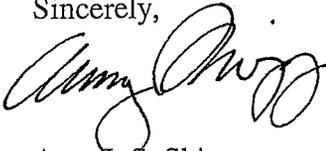
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the 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,



Amy E.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/mcf

Ref: ID# 303757

Enc. Submitted documents

c: Ms. Stephanie Runte  
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(w/o enclosures)