



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 7, 2008

Ms. Kristi J. Orr
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2008-03143

Dear Ms. Orr:

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# 304830.

The Houston Police Department (the "department") received a request for three specified incident reports. You state that the department released some of the requested information, including one of the responsive reports. You claim that the submitted information is excepted from disclosure under sections 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(a) 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;
- (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 release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit 3 relates to a pending criminal prosecution. You further state that although this case has resulted in a conviction, the case is currently on appeal. You have provided documentation that reflects the status of a post-conviction writ of habeas corpus. However, the documentation you provided shows the Texas Court of Criminal Appeals issued a mandate dated May 24, 1991, regarding the final disposition of this matter. Furthermore, the court granted relief on the writ of habeas corpus on May 8, 1991. Therefore, because the department has not shown that an appeal is pending, we conclude the department may not withhold Exhibit 3 under section 552.108(a)(1) of the Government Code.

Next, you state that Exhibit 2 pertains to a case that concluded in a final result other than conviction or deferred adjudication. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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)(2). You state that Exhibit 2 relates to a criminal investigation that concluded in a dismissal of the charges against the suspect in this matter. Based on your representation and our review of the information at issue, we conclude that section 552.108(a)(2) is applicable to Exhibit 2.

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 Publishing 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). Thus, with the exception of basic information, which must be released, the department may withhold Exhibit 2 under section 552.108(a)(2) of the Government Code.

You also raise section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a). We agree that the department must withhold the marked Texas motor vehicle record information in Exhibit 3 under section 552.130.

Finally, you claim that some of the remaining information is excepted under section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. We agree that the

department may withhold the social security numbers you have marked under section 552.147 of the Government Code.¹

In summary, with the exception of basic information, the department may withhold Exhibit 2 under section 552.108(a)(2) of the Government Code. The department must withhold the information marked under section 552.130 of the Government Code. The department may withhold the marked social security numbers under section 552.147 of the Government Code. 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 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).

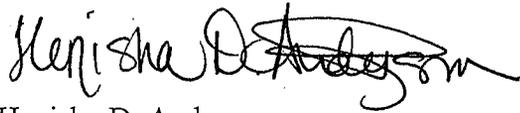
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

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 "Henisha D. Anderson". The signature is fluid and cursive, with the first name being the most prominent.

Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/mcf

Ref: ID# 304830

Enc. Submitted documents

c: Mr. Clifton Terrell
2902 Orion Street
Houston, Texas 77088
(w/o enclosures)