



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 5, 2009

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001

OR2009-07745

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# 345189.

The Houston Police Department (the "department") received a request for incident report numbers 094130008, 031954509, and 27053809. You state that the "Public Release Information" pertaining to report numbers 094130008 and 031954509, and the entirety of report number 27053809, will be released to the requestor.<sup>1</sup> 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.

The department first asserts that incident report number 031954609 is excepted from disclosure under section 552.108(a)(1) of the Government Code. 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] release of the information would interfere with the detection, investigation, or prosecution

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<sup>1</sup>We assume that the "public release information" you will release is the basic information referred to under section 552.108(c) of the Government Code. Gov't Code § 552.108(c) (basic information about an arrested person, and arrest, or a crime is not excepted from disclosure under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

of crime.” Gov’t Code § 552.108(a)(1). 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 state that this incident report relates to an open and active criminal investigation. Based on this representation, we conclude that the release of report number 031954609 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. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

The department next asserts that incident report number 094130008 is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) 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. In this case, the department states that report number 094130008 pertains to a criminal investigation that concluded in a result other than conviction or deferred adjudication. You explain that the department referred this case to the Fort Bend County District Attorney’s Office, which then referred the complainant to the Fort Bend County Justice of the Peace to file class C charges. Although you state no charges have been filed, the shortest possible statute of limitations for assault is two years, which has not run. *See Code Crim. Proc. art. 12.02* (indictment or information on misdemeanor may be presented within two years from date of commission of offense, and not afterward). Because charges can be filed at any time prior to the expiration of the statute of limitations, you have failed to demonstrate that this investigation had concluded in a final result other than conviction or deferred adjudication on the date the department received the request. Therefore, the department may not withhold this report under section 552.108(a)(2) of the Government Code.

You claim, however, that the marked portions of report number 094130008 are confidential by law. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov’t Code § 411.083.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to

another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally Id.* §§ 411.090-.127. Accordingly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Furthermore, Section 552.101 encompasses the doctrine of 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). A compilation of an individual's criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. 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). We find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Thus, the department must withhold the CHRI we have marked under section 552.101 in conjunction with federal law and section 411.083 or common-law privacy. You have not provided any arguments explaining how the remaining information you highlighted is confidential criminal history information. Accordingly, this information may not be withheld under section 552.101.

You assert that the driver's license number in incident report number 094130008 is excepted from disclosure under 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)(1), (2). Accordingly, the department must withhold the Texas driver's license number you highlighted under section 552.130.

You also seek to withhold a social security number in incident report number 094130008 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. The department may withhold the social security number you highlighted in incident report number 094130008 under section 552.147.<sup>2</sup>

In summary, the department may withhold report number 031954609 under section 552.108(a)(1). The department must withhold the information we have marked under

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<sup>2</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 in conjunction with federal law and chapter 411 of the Government Code or common-law privacy. The department must withhold the Texas driver's license number you highlighted under section 552.130 and may withhold the social security number you highlighted under section 552.147. The remaining information in incident report number 094130008 must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 345189

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)