



July 26, 2000

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-2836

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137422.

The Houston Police Department (the "department") received a request for fourteen specified offense reports. You inform us that the department has released six of the reports to the requestor. You claim that certain contents of the other eight reports are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.108 of the Government Code, the "law enforcement exception," provides in relevant part that "[i]nformation 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 . . . 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). A governmental body that claims an exception to disclosure under section 552.108 must sufficiently explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You raise only section 552.108(a)(2) as to all of the information at issue. Section 552.108(a)(2) protects law enforcement records that pertain to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. *See also* Open Records Decision No. 616 (1993) (construing statutory predecessor).

In seeking to withhold the eight submitted offense reports that are in question here under section 552.108(a)(2), you advise us that the corresponding cases consist of: (1) three cases (nos. 041091497, 50552297, and 81411496) that have been cleared with no arrest, based on

lack of prosecution by the complainant; (2) one case (no. 100985797) that was cleared because of lack of prosecution by the district attorney; (3) two cases (nos. 109434297 and 168440796) in which there has been no arrest and no charge; (4) one case (no. 009714996) that is open for further investigation, with no arrest made; and (5) one open case (no. 059805698) that the complainant has not prosecuted. Based on your representations and our review of the submitted offense reports, we find that the department has made a sufficient showing that the case has concluded in a result other than a conviction or a deferred adjudication in case nos. 041091497, 50552297, 81411496, 100985797, and 059805698. We therefore conclude that the offense reports in those five cases are excepted from disclosure under section 552.108(a)(2) of the Government Code. As to the other three offense reports, however, neither the submitted information itself nor your representations demonstrate that those cases have concluded. Accordingly, the department has not demonstrated the applicability of section 552.108(a)(2) to the offense reports in case nos. 109434297, 168440796, and 009714996. We therefore conclude that those reports are not excepted from disclosure and must be released, except as specified below.

With further regard to case nos. 041091497, 50552297, 81411496, 100985797, and 059805698, 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). Section 552.108(c) refers to the basic front-page offense and arrest report information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [1st Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The department must release basic front-page information, including a detailed description of the offense, even if that information does not literally appear on the front page of the corresponding police report. *See* Gov't Code § 552.108(c); *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). As you indicate that basic front-page information pertaining to all eight of the submitted offense reports already has been released, the department may withhold the other contents of the reports in case nos. 041091497, 50552297, 81411496, 100985797, and 059805698.

With further regard to case nos. 109434297, 168440796, and 009714996, the offense report in each of those cases contains motor vehicle record information whose disclosure is governed by section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We have labeled the motor vehicle record information that the department must withhold in accordance with section 552.130.

The reports in case nos. 168440796 and 009714996 also include social security number information that may be confidential under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if that information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.*¹ See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number information in question was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the information in question was obtained or is maintained pursuant to such a law and is therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any of the social security number information that we have labeled, the department should ensure that the information was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

In summary, offense report nos. 041091497, 50552297, 81411496, 100985797, and 059805698 are excepted from disclosure under section 552.108(a)(2) of the Government Code. Other than basic front-page information, the department may withhold the contents of those five reports. The other three offense reports contain motor vehicle record information that must be withheld in accordance with section 552.130 of the Government Code and social security number information that may be confidential under section 552.101 in conjunction with federal law. Otherwise, the contents of those three reports are not excepted from disclosure and 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

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

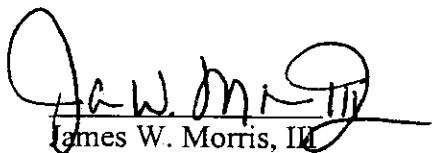
governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 137422

Encl. Submitted documents

cc: Mr. Joel Randal Sprott
Munisteri, Sprott, Rigby, Newson & Vincent
Attorneys at Law
3323 Richmond Avenue, Suite A
Houston, Texas 77098
(w/o enclosures)