



October 25, 2000

Ms. Jan Clark
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR2000-4152

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140504.

The City of Houston (the "city") received a request for 1) a copy of the payroll records demonstrating regular pay and overtime pay from January 1, 1996, to the present for named city employees, 2) all documents, receipts, notes, and evidence of any nature indicating any and all sums of money spent or charges incurred by those employees in the course of their employment as a Vice Officer on May 11, 2000, at certain businesses, and 3) all documents, notes, memorandum, and evidence of any nature regarding any and all complaints, grievances, or any other actions or procedures filed or alleged regarding the named employees. You state that all documents you believe are not excepted from public disclosure under the Public Information Act (the "Act") have been or will be released to the requestor. You claim that the submitted information is excepted from disclosure under section 552.108(a)(1) of the Government Code. We have considered the exception you claim and reviewed the submitted information, Exhibits 2 and 3.

Initially, we note that Exhibit 3 contains information that falls within the purview of section 552.022(a)(3). Section 552.022(a)(3) provides that information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body is not excepted from required disclosure unless they are made expressly confidential by law. You have not indicated, nor are we aware of, any other law that would make this information confidential. We note that section 552.108 of the Government Code is a discretionary exception under the Act and does not constitute "other law" for the purposes of section 552.022.¹ Therefore, we find that Exhibit 3 contains information that is

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104,

public information not excepted from public disclosure under section 552.022(a)(3). Accordingly, the department must release Exhibit 3 in its entirety to the requestor.

You assert that the submitted information is excepted from public disclosure under section 552.108(a)(1). Section 552.108(a)(1) of the Government Code states that 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 release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that the submitted information pertains to an incident that has not yet been fully prosecuted. You state charges have been filed, bonds have been posted, and an attorney has been retained, but the cases have yet to go to trial. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.* Therefore, the department may withhold Exhibit 2 from public disclosure under section 552.108(a)(1).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibit 2 from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information in Exhibit 2 that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the city must release Exhibit 3 in its entirety under section 552.022(a)(3). The city may withhold Exhibit 2 under section 552.108(a)(1). However, basic information must be released under section 552.108(c).

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 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

information relating to competition or bidding), 549 at 6 (1990). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

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).

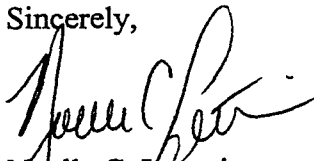
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

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 the General Services Commission 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,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 140504

Encl. Submitted documents

cc: Mr. Paul Nugent
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(w/o enclosures)