



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2006

Ms. Michele Austin
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251

OR2006-00475

Dear Ms. Austin:

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# 240073.

The Houston Police Department (the "department") received a request for all information related to the shooting death of a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.1175, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note that submitted information includes a custodial death report. In 2003, the Office of the Attorney General (the "OAG") revised the format of a custodial death report. Previously, the report consisted of five sections. In Open Records Decision No. 521 at 5 (1989), we concluded that under article 49.18(b) of the Code of Criminal Procedure in conjunction with a directive issued by the OAG, section one of a custodial death report filed with this office was public information and must be released, but sections two through five of the report, as well as attachments to the report, were confidential. *See* Crim. Proc. Code art. 49.18(b) (attorney general shall make report, with exception of any portion of report that attorney general determines is privileged, available to any interested person). A custodial death report now consists of two pages and an attached summary of how the death occurred. The OAG has determined that the two-page report and summary must be released to the public; however, any other documents submitted with the revised report are confidential

under article 49.18 of the Code of Criminal Procedure. In this instance, the submitted documents include the revised custodial death report form. Accordingly, this report, which we have marked, must be released under article 49.18 of the Code of Criminal Procedure.

Section 552.101 exempts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by other statutes. Section 143.1214 of the Local Government Code provides in part:

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department's use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

- (1) to another law enforcement agency or fire department;
- (2) to the office of a district or United States attorney; or
- (3) in accordance with Subsection (c).

(c) The department head or the department head's designee may forward a document that relates to disciplinary action against a fire fighter or police officer to the director or the director's designee for inclusion in the fire fighter's or police officer's personnel file maintained under Sections 143.089(a)-(f) only if:

- (1) disciplinary action was actually taken against the fire fighter or police officer;
- (2) the document shows the disciplinary action taken; and
- (3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

Local Gov't Code § 143.1214(b)-(c). You explain that the submitted information relates to an internal affairs investigation of alleged misconduct by police officers. You state that the allegations were unfounded and no disciplinary action was taken. You represent that the submitted information is maintained in files created by the department for its own use and is not held in any personnel file maintained under section 143.089(a) of the Local Government Code. Additionally, you explain that the submitted information does not meet

the conditions specified by section 143.1214(c) for inclusion in an officer's civil service file. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(f). While we generally agree that internal affairs investigations that do not result in disciplinary action are confidential under section 143.1214, we note that the submitted information includes department offense reports which are also maintained separate and apart from the internal affairs investigation. We further note that some of the other submitted information, including audiotapes and videotapes, may also be maintained separate and apart from the internal affairs investigation. The present request does not specifically seek information from the police officers' department personnel files. Instead, the request seeks information pertaining to a specified incident. Because the requestor asks for information about the incident in general, both the police officers' personnel files and any copy of the investigatory materials that the department maintains for law enforcement purposes are responsive. The department may not engraft the confidentiality afforded to records under section 143.1214 to records that exist independently of the internal files. Accordingly, to the extent that the submitted information is maintained solely in the department's internal investigative files, it is excepted from disclosure under section 552.101 in conjunction with section 143.1214 of the Local Government Code. However, to the extent the submitted information is maintained for other law enforcement related purposes, it is not excepted from disclosure under section 552.101 in conjunction with section 143.1214 of the Local Government Code.

We now address your arguments regarding section 552.108 for the submitted information that is not confidential under section 143.1214 of the Local Government Code. 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. 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 the remaining information relates to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to this information.

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 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). *See* Open Records Decision No. 127 (1976) (listing basic information that must be released from offense report in accordance with *Houston Chronicle*). Thus, with the exception of the basic information, the department may withhold the remaining information pursuant to section 552.108(a)(2). We note that you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the marked custodial death report must be released under article 49.18 of the Code of Criminal Procedure. To the extent that the submitted information is maintained solely in the department's internal investigative files, it is excepted from disclosure under section 552.101 in conjunction with section 143.1214 of the Local Government Code. Except for basic information, the remaining information may be withheld pursuant to section 552.108(a)(2) of the Government Code.¹

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 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 appeal 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

¹As our ruling is dispositive, we need not address your remaining arguments.

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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 240073

Enc. Submitted documents

c: Ms. Mary A. Dolan
2618 Oak Road
Pearland, Texas 77584
(w/o enclosures)