



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2007

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2007-12324

Dear Mr. Gambrell:

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# 289891.

The Houston Police Department (the "department") received a request for three specified offense reports and the personnel file of a named department officer. You state that you will release portions of the responsive information. You also state that you will direct the requestor to the City of Houston's Human Resources Department for information found in the officer's civil service file. You claim that the submitted 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.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 143.089(g) of the Local Government Code. The City of Houston is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

different types of personnel files: a file that must be maintained by the city's civil service director or the director's designee, and another file that may be maintained by the city's police department for its own use. Local Gov't Code § 143.089(a), (g). Information maintained in a police department's personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You explain that the information submitted in Exhibit 4 consists of documents that pertain to the officer's employment relationship with the department. You state that this information is contained in a file maintained by the department under section 143.089(g) of the Local Government Code. Based on your representation and our review of the information at issue, we conclude Exhibit 4 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.²

Next, we turn to your argument that section 552.108 of the Government Code excepts the remaining offense reports from disclosure. You assert that offense reports #167501206-U and #003528707-M are excepted under section 552.108 of the Government Code. Section 552.108(a)(1) 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 of crime.” 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* Gov't Code §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit 3, offense report #167501206-U, relates to an inactive criminal investigation of an offense for which the statutes of limitations have not run. You further state that “the investigation may be reactivated once additional leads are developed.” Based on this representation, we conclude that the release of offense report #167501206-U 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).

Section 552.108(a)(2) 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 and provide documentation showing that Exhibit 2, offense report #0035228707-M, pertains to a case that was dismissed, and thus concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

²As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure for Exhibit 4.

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*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic front-page offense and arrest information, the department may withhold offense report #167501206-U and #003528707-M under section 552.108.³

Finally, you claim that the social security number you have highlighted in offense report #003528707-M is excepted from disclosure under section 552.147 of the Government Code. This section provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the department may withhold the social security number you have marked in Exhibit 2 under section 552.147.⁴

In summary, Exhibit 4 must be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. With the exception of basic information, offense report #167501206-U may be withheld under section 552.108(a)(1) of the Government Code. With the exception of basic information, offense report #003528707-M may be withheld under section 552.108(a)(2) of the Government Code. The social security number you marked in Exhibit 2 may be withheld under section 552.147(b) of the Government Code.

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).

³As our ruling is dispositive, we need not address your remaining argument under section 552.130 of the Government Code for this information.

⁴Section 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. Gov't Code § 552.147(b).

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 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,



M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/mcf

Ref: ID# 289891

Enc. Submitted documents

c: Mr. James E. Fowler, Jr.
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(w/o enclosures)