



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 13, 2007

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

OR2007-14813

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# 294880.

The Houston Police Department (the "department") received a request for all information pertaining to a specified incident. You indicate that you have released the custodial death report to the requestor in accordance with a previous ruling from our office. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 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, a portion of which consists of a representative sample.¹

Initially, we note that portions of the requested information were the subject of a prior ruling by this office, issued as Open Records Letter No. 2007-13685 (2007). In this letter ruling, we ruled that the department must withhold a portion of the information submitted in that ruling pursuant section 552.101 in conjunction with section 143.1214 of the Local Government Code. We also held that the department may withhold the remaining information submitted in that ruling under section 552.108(a)(2). You indicate that the pertinent facts and circumstances have not changed since the issuance of Open Records Letter No. 2007-13685. Thus, the department must continue to rely on Open Records Letter No. 2007-13685 for the information that was at issue in that prior ruling. *See* Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as previous determination when: 1) the records or information at issue are precisely the same records or

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.

information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).² For the information not previously ruled upon, we will address the department's arguments.

Next, we note that the remaining information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in part that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). We find that the remaining information consists of completed investigations made for or by the department. The department must release information subject to section 552.022 unless it is excepted from disclosure under section 552.108 of the Government Code, or is expressly made confidential under other law. Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not "other law" that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Consequently, the department may not withhold the remaining information pursuant to section 552.103 of the Government Code. However, as information subject to section 552.022(a)(1) may be withheld under sections 552.101, 552.108, 552.1175, and 552.130, we will consider the applicability of these exceptions for the submitted information.³

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

²As our ruling is dispositive, we need not address your arguments for this information.

³We 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 143.1214 of the Local Government Code. Section 143.1214 provides in relevant 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 state that the information in Exhibit 5 is the department's Internal Affairs Division ("IAD") investigation of alleged misconduct by department officers. Furthermore, you state that the requestor is not another law enforcement agency or fire department or the office of a district or United States attorney. You inform us that a portion the information in Exhibit 5 relates to an IAD investigation that did result in disciplinary action under chapter 143 of the Local Government Code. However, you inform us that this information in Exhibit 5 does not meet all of the conditions for release of investigatory files outlined in section 143.1214(c).⁴ You also state that the remaining information in Exhibit 5 relates to an investigation that did not result in disciplinary action.

⁴You state that the department has forwarded the documents meeting the requirements of section 143.1214(c) to the officer's personnel file maintained under section 143.089(a) of the Local Government Code.

Thus, you indicate that this information in Exhibit 5 is maintained in a departmental file and is not part of the civil service personnel file. *See id.* § 143.1214(c); *see also id.* §143.089(a)-(f). Based on your representations and our review, we conclude that Exhibit 5 is subject to section 143.1214 of the Local Government Code and must be withheld under section 552.101 of the Government Code. Therefore, the department must withhold all of the remaining information in Exhibit 5 under section 552.101 in conjunction with section 143.1214 of the Local Government Code.

You seek to withhold Exhibits 3 and 4 under section 552.108 of the 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. 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. You assert that the information at issue pertains to a criminal case that did not result in conviction or deferred adjudication. Therefore, we find that department may withhold Exhibits 3 and 4 under 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. *Id.* § 552.007.

In summary, the department must continue to rely on our ruling in Open Records Letter No. 2007-13685, with respect to the information requested in that instance that was also at issue in this request. The department must withhold remaining information in Exhibit 5 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. The department may withhold Exhibits 3 and 4 under section 552.108(a)(2) of the Government Code.⁵

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).

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure.

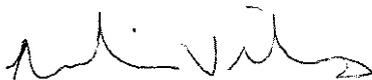
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jb

Ref: ID# 294880

Enc. Submitted documents

c: Mr. Carlos A. Leon
Comerica Bank Building
One Sugar Creek Center Boulevard, Suite 980
Sugarland, Texas 77478
(w/o enclosures)