

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2007

Ms. Judith Sachitano Rawls
Beaumont Police Department
P. O. Box 3827
Beaumont, Texas 77704

OR2007-16832

Dear Ms. Rawls:

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 #297698.

The City of Beaumont (the "city") received a request for use of force reports filed during April, 2006 and from January 1, 2007 to the present, including the names of involved officers and the types of force used. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that is made confidential by statute. *Id.* § 552.101. Section 143.089 of the Local Government Code contemplates two different types of

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.

personnel files, a police officer's civil service file that a city's civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). You state that the city is a civil service city under chapter 143 of the Local Government Code.

In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a).² *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or in possession of a police department because of its investigation into a police officer's misconduct, and the police department must forward them to the city's civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under chapter 552 of the Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to a police officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted information in Exhibit B is maintained in the city's police department internal files, and that it pertains to investigations of alleged misconduct that did not result in any discipline against any police officer. Based on your representations and our review of the submitted information, we conclude that this information is generally confidential pursuant to section 143.089(g) of the Local Government Code. However, we have received correspondence from the requestor that includes a copy of the city's police department directive 01.05.06. This directive states that “an officer using O.C. Spray, a TASER or who uses a hand-held control device will complete a ‘Force Incident Data Report’ and submit it to Internal Affairs for statistical record keeping purposes.” The city states that these use of force reports are maintained solely in the 143.089(g) internal affairs files. However, because the city uses the submitted information for purposes beyond evaluation

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143.

of police department personnel, this information is also maintained independently, separate and apart from the personnel files of the city's police department. The city may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. *See San Antonio Express-News*, 47 S.W.3d at 556 (confidentiality of use of force report maintained in section 143.089(g) file cannot be engrafted onto same report that is maintained outside of section 143.089(g) file). Therefore, none of the submitted information may be withheld under section 552.101 in conjunction with section 143.089(g).

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release a biometric identifier of an individual, such as fingerprints, except in certain limited circumstances. *See Gov't Code* §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). The submitted documents do not contain biometric identifiers for purposes of chapter 560; therefore, the city may not withhold any of the submitted information under section 552.101 on that ground.

You state that the information at issue may be subject to chapter 411 of the Government Code. Section 552.101 encompasses chapter 411, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* § 411.083. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we determine that no portion of the information at issue constitutes CHRI generated by TCIC and NCIC. Therefore, no portion of the information is confidential under chapter 411 and may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find that portions of the submitted use of force records contain information that is highly intimate and not of legitimate public interest. Accordingly, the city must withhold the information that we have marked under section 552.101 in conjunction with common-law privacy.

You claim that some of the reports at issue 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977). You argue that the submitted use of force records should be excepted under section 552.108(a)(1) because they “may also relate to an on-going criminal case.” Based on our review of your representations and the submitted information, we find that you have not adequately explained how the release of these records would interfere with a pending criminal investigation or prosecution. Therefore, we find that you have failed to demonstrate how their release would interfere with the detection, investigation, or prosecution of crime, and they may not be withheld under section 552.108(a)(1).

We note that some the submitted use of force reports and accompanying information contain information subject to section 552.130.³ Section 552.130 excepts from disclosure information that “relates to. . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. The city must withhold the Texas-issued driver’s license and license plate numbers we have marked under section 552.130.

The submitted information also contains e-mail addresses subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137 (a)-(c). The e-mail addresses contained in the submitted information are not of a type specifically excluded by section 552.137(c). Unless it received consent for release from the owners of

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

these addresses, the city must withhold the e-mail addresses we have marked pursuant to section 552.137.

In summary, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and section 552.130 of the Government Code. Unless it received consent for their release, the city must also withhold the e-mail addresses we have marked under section 552.137 of the Government Code. The remaining information must be released to the requestor.⁴

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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).

⁴We note that the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a government 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.

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,

A handwritten signature in cursive script, appearing to read "Reg Hargrove", with a long horizontal flourish extending to the right.

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 297698

Enc. Submitted documents

c: Ms. Dee Dixon
Beaumont Enterprise
P. O. Box 3071
Beaumont, Texas 77704
(w/o enclosures)

**STEPHEN YELENOSKY**

Judge
(512) 854-9374

DANA LEWIS
Staff Attorney
(512) 854-9892

ANGELA RILEY
Court Operations Officer
(512) 854-9712

345TH DISTRICT COURT
TRAVIS COUNTY COURTHOUSE
P. O. BOX 1748
AUSTIN, TEXAS 78767

ALBERT ALVAREZ
Official Reporter
(512) 854-9373

DANIKAE DOETSCH
Court Clerk
(512) 854-5836

October 26, 2010

Ms. Judith Sachitano Rawls
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Ms. Brenda Loudermilk
Assistant Attorney General
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P.O. Box 12548
Austin, Texas 78701
Via Fax (512) 320-0167

Re: D-1-GV-07-002630; *City of Beaumont vs. Greg Abbott, Attorney General for the State of Texas vs. Hearst Newspapers Partnership II, LLC; in the 345th District Court of Travis County, Texas*

Dear Counsel:

Enclosed please find attached a Final Judgment signed by Judge Yelenosky on the above mentioned cause. The original judgment has been filed with the District Clerk's Office.

Sincerely,
Handwritten signature of Angela Riley in cursive script.

Angela Riley
Court Operations Officer, 345th District Court
Travis County, Texas

Enclosure(s) 8 pages including cover page

CAUSE NO. D-1-GV-07-002630

CITY OF BEAUMONT,
Plaintiff,

V.

GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS,
Defendant,

and

HEARST NEWSPAPERS PARTNERSHIP
II, LLC,
Intervenor/Defendant.

345TH JUDICIAL DISTRICT

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345TH JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas
OCT 26 2010 BP
Amalia Rodriguez-Mendoza, Clerk

FINAL JUDGMENT

This matter is set for trial on the merits on November 1, 2010. The parties have announced that they have reached an agreement on the remaining issues to be tried and represent to the Court that this final judgment should be entered by the Court. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552 (West 2004 & Supp. 2007). The Court having considered the parties' request, the pleadings and orders on file, enters the following final orders:

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that

1. The Force Incident Reports (also known as Force Incident Data Reports) and Supervisory Taser Use Reports are subject to disclosure.
2. The IA Pro print outs, as redacted by the Attorney General and reflected in the representative sample documents as well as located in the complete set of protective order documents with corresponding redactions, are subject to disclosure. The Attorney General's redactions to the IA Pro print outs are set forth in Bates Nos. 1023, 1027, 1033, 1041, 1050-51, 1064, 1068, 1092, 1099, 1100-01, 1111, 1123, 1132-33, 1144-45, 1158-59, 1168-69, 1255-56 and identified in D's Ex. 1, Group C to D's Response to P's MSJ. Intervenor has and does withdraw its request (1) to the extent it covers IA Pro print outs solely reflecting a citizen complaint where no mandatory reporting is required and no

reporting in fact took place, and (2) for the word "complaint" in the upper left hand corner and the sections "allegation" or "actions taken" and any information therein on Bates Nos. 35,000, 35,018, 35,060, 35,162, 35,230, 35,279, 30,259, 30,275.

3. The criminal case files located in the complete set of protective order documents are subject to disclosure.

4. The parties represent that Attachments 1 and 2 to this Judgment identify by Bates Numbers the documents subject to disclosure under this Judgment and Attachment 1 also identifies the redactions to be made on the representative sample and the complete set of protective documents under this Judgment.

5. Intervenor represents that it has withdrawn its request for the remaining protective order documents and for any names of juveniles in use of force reports, Bates Nos. 1251-53, 20,267, 20,272, 20,274-76,30,473, 30,478-79, 30,485, 30,491, 30,533, 30,537, 30,539-40, the word "complainant," which may or may not denote a citizen complainant, in the "linked phone number" section of an IA Pro print out, for example, as it appears in Bates No. 1254, and any Internal Affairs matter number on an IA Pro print out. Intervenor also withdraws its request to the extent it covers social security numbers, driver's license numbers or Texas identification numbers, and information under Tex. Gov't Code § 552.101 and common law privacy, marked for redaction by the Attorney General as part of Letter Ruling OR2007-16832.

6. Internal Affairs Division (IAD) documents, as reflected in the representative sample and in the complete set of protective order documents (all of which did not result in civil service discipline) that emanate solely from a public (citizen) complaint and any ensuing investigation are not subject to disclosure and are included as part of the documents to which Intervenor has withdrawn its request, pursuant to paragraph 5 of this Judgment. The documents referenced in this paragraph 6 include: IAD Notices of Investigation, IAD Citizen Affidavits, signed citizen complainant Prefaces to Affidavits, IAD photos taken pursuant to an IAD investigation of a public complaint, IAD Investigative

Summaries, IAD Disciplinary Review Board (DRB) Letters to Complainants (Notices and Results), DRB Classification Notices to Officers, DRB IAD Chief's Review Sheets, Disciplinary Recommendation Memos to the Chief of Police, and DRB Summary Sheets. This paragraph 6 does not estop Intervenor or the Attorney General from challenging a claim under Tex. Loc. Gov't Code § 143.089(g) by the City for any other document not specifically named in this paragraph 6 and located in the IAD documents in a subsequent request for information and request for an open records ruling.

7. Intervenor's withdrawal includes its request as to any documents in the protective order documents that have been expunged by court orders x986 and x987.

8. Plaintiff and Intervenor have agreed that counsel for Intervenor will be producing the documents subject to disclosure directly to Intervenor, in redacted form as provided by this Judgment. Such disclosure does not violate the June 8, 2008 Protective Order.

9. The Protective Order is modified to permit Intervenor and Defendant (1) to return documents or provide an affidavit of complete destruction to the City of all documents produced by the City pursuant to the Protective Order that are not to be released, and (2) to retain the documents for up to 75 days, if needed, for redaction issues to be addressed by the parties. If Intervenor's counsel requires reproduction of a document subject to disclosure which is illegible or has been marked up or destroyed, Plaintiff will provide such copy, except for any documents that have been expunged by court orders, x986 and x987.

10. Plaintiff will pay Intervenor attorney fees in the amount of \$62,328.00 and costs in the amount of \$4,191.63.

11. Plaintiff will pay Defendant Attorney General his costs in the amount of \$381.40; Defendant Attorney General represents that he has waived his claim for attorney fees.

12. All parties represent and do waive their rights to appeal this final judgment.

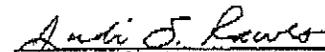
All relief not expressly granted is denied; and

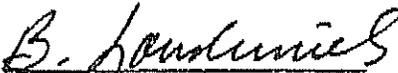
This Final Judgment finally disposes of all claims between Plaintiff, Defendant and Intervenor, and is a final judgment.

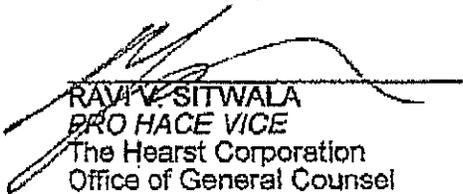
SIGNED this the 25th day of October, 2010.


PRESIDING JUDGE

APPROVED:


 JUDITH SACHITANO RAWLS
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 RAVI V. SITWALA
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 Telephone: (212) 649-2006
 Fax: (646) 280-2006
 ATTORNEY FOR INTERVENOR

ATTACHMENT 1

**Bate Stamp Number Index
Representative Sample Documents
To Be Disclosed**

10-20-2010

Bate Stamp Number

Note¹

1,000 through 1,302

1000	1026		1184	1209 *	1233	1293
1001	1027 +	1122	1185	1210 *	1234	
1002	1028	1123 +	1186	1211	1235	
1003	1032	1131	1187	1212	1236	
1004	1033 +	1132 +	1188	1213	1237	
1005	1040	1133 +	1189	1214	1238	
1006	1041 +	1140	1190	1215	1239	
1007	1049	1141	1191 *	1216	1240	
1008	1050 +	1141	1192	1217	1241	
1009	1051 +	1142	1193	1218	1242	
1010	1063	1143	1194	1219	1243	
1011	1064 +	1144 +	1195	1220	1244	
1012	1067	1145 +	1196	1221	1245-1246	
1013	1068 +	1157	1197	1222	1247	
1014	1091	1158 +	1198	1223	1248	
1015	1092 +	1159	1199	1224	1249	
1016	1093	1167	1200	1225	1250 *	
1017	1098	1168 +	1201 *	1226	1251	
1018	1099 +	1169 +	1202	1227	1252	
1019	1100 +	1179	1203 *	1228 *	1253	
1020	1101 +	1180	1204	1229	1254	
1021 %	1110	1181	1206	1230	1255 +	
1022	1111	1182 *	1207	1231	1256 +	
1023 +	1112	1183	1208	1232	1257	

1) * redaction per AG for confidential info - SSN, TX DL, TX license plate, common law privacy;
 + bracketed info to be redacted per AG;
 % other redactions such as SSN, TX DL, TX license plate, common law privacy.

ATTACHMENT 2

COMPLETE SET OF RESPONSIVE DOCUMENTS TO BE DISCLOSED

Bate Stamped Number

5000	25,205	30,053	30,198	30,354	30,491
5001	25,007	30,057	30,215	30,363-30,366	30,492
5003	25,008	30,058	30,216	30,378-30,382	35,000
5005-5008	25,009	30,065	30,217	30,390	35,001
5010-5015	25,011	30,066	30,224	30,391	35,018
5021-5024	25,012	30,071	30,225	30,392	35,019
5026	25,013	30,072	30,226	30,405	35,020
5027	25,015	30,080	30,227	30,406	35,060
5029-5033	25,016	30,081	30,238	30,407	35,061
5035-5044	25,017	30,093	30,239	30,416	35,075
5046-5055	25,019	30,094	30,246	30,417	35,076
5057-5073	25,020	30,095	30,247	30,418	35,077
5075-5078	25,021	30,109	30,248	30,427	35,078
5080-5085	25,023	30,110	30,249	30,428	35,113
5087-5095	25,024		30,259	30,429	35,123
5097-5100	25,025	30,118	30,260	30,434	35,124
5102-5105	25,027	30,119	30,261	30,435	35,162
10,000	25,028	30,120	30,275	30,436	35,163
10,001	25,029	30,133	30,276	30,445	35,164
10,009	25,031	30,134	30,284	30,446	35,173
10,010	25,032	30,135	30,285	30,447	35,250
10,014-10,016	25,034	30,147	30,294	30,456	35,251
10,021	25,035	30,148	30,295	30,457	35,252
10,022	25,036	30,155	30,296	30,458	35,256
10,025-10,027	25,038	30,156	30,306	30,465	35,257
15,045	25,039	30,162	30,307	30,466	35,258
15,046	25,040	30,163	30,308	30,472	35,279
15,047	30,000	30,167	30,313-30,316	30,473	35,280
15,058	30,001	30,168	30,350	30,474	35,281
20,000-20,012	30,026	30,169	30,331	30,478	35,335
20,014-20,053	30,027	30,177	30,332	30,479	35,336
20,055-20,324	30,037	30,178	30,337	30,480	35,337
25,000	30,038	30,183	30,338	30,484	35,375
25,001	30,039	30,184	30,339	30,485	35,376
25,203	30,043	30,185	30,352	30,486	35,377
25,204	30,051	30,197	30,353	30,490	35,378
	30,052				

1) marked 911 phone call CD from C2006-052, (CCFD).

2) marked Dispatch (audio) tape in C2006-052, (CCFD).