



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-01767

Dear Ms. Byles:

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# 335244 (City Request Nos. 0835-09, 0839-09, 0841-09).

The Fort Worth Police Department (the "department") received a request for the personnel files and internal affairs investigations of three named police officers.¹ You state that some of the requested information, including information in the named officers' civil service files, is being released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim that some of the submitted information was the subject of a prior ruling of this office, issued as Open Records Letter No. 2008-11026 (2008) in which this office concluded that, with the exception of basic information, the department may withhold incident report number 08-56979 under section 552.108(a)(1) of the Government Code. To the extent the law, facts, and circumstances on which the prior ruling was based have not changed, the department may continue to rely on that ruling as a previous determination and

¹ We note that the requestor excluded, among other things, information regarding investigations of job-related misconduct that did not result in disciplinary action, from her request for information; therefore, this information is not responsive to the request, and the department is not required to release such information in response to this request.

withhold or release incident report number 08-56979 in accordance with Open Records Letter No. 2008-11026. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, in regard to the officers' personnel files, you acknowledge that the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You raise section 552.101 of the Government Code for the untimely submitted information. Because section 552.101 can provide a compelling reason to withhold information, we will consider your arguments under this exception for the submitted personnel files. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381-82. We will also consider your claims for the timely submitted administrative investigation.

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 of the Local Government Code. The City of Fort Worth is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a file that must be maintained by the civil service director or the director's designee, and another file that may be maintained by the police department for its own use.² Local Gov't Code § 143.089(a), (g). Information 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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted personnel information is maintained in the department's internal files as authorized under section 143.089(g) of the Local Government Code. Based on this

² Section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee. You state you have released the civil service file to the requestor.

representation and our review of the submitted documents, we agree that the information at issue is confidential pursuant to section 143.089(g). Accordingly, the department must withhold the submitted personnel information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.³

We now address your arguments against the disclosure of the timely submitted information. Section 552.108(a) 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). We note that the remaining information is related to an administrative investigation regarding allegations against department officers. Section 552.108 is generally not applicable to records of an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (addressing statutory predecessor to Gov’t Code § 552.108). You state, however, and provide an affidavit from the Tarrant County District Attorney’s Office showing, that the remaining information also relates to a pending criminal prosecution. Based upon this representation and our review, we conclude that the release of the remaining information 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1).⁴

In summary, the department may continue to rely on Open Records Letter No. 2008-11026 and withhold or release incident report number 08-56979 in accordance with that ruling. The department must withhold the submitted personnel information under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. With

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

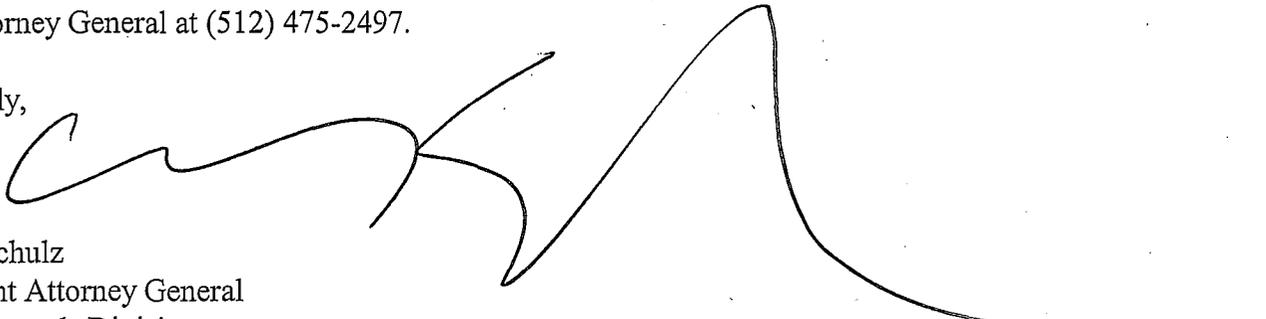
⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure.

the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A large, stylized handwritten signature in black ink, likely belonging to Chris Schulz, is written over the signature line and extends across the middle of the page.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 335244

Enc. Submitted documents

cc: Requestor
(w/o enclosures)