



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2009

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-03472

Dear Ms. Chang:

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# 338149.

The City of Houston (the "city") received a request for (1) complaints by a named employee regarding a city facility, and related reports, memoranda, communications, and correspondence produced in response to his complaints, and (2) written complaints against the employee. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

We note that you have not submitted information responsive to category one of the request. To the extent such information exists, we presume that the city has released it. If not, the city must do so at this time. *See* Gov't Code §§ 552.301, .302.

¹You did not raise section 552.137 until after the ten-business day deadline. *See* 552.301(b). Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See* 552.302. However, mandatory exceptions cannot be waived by a governmental body. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Because section 552.137 is a mandatory exception, we will consider your argument under section 552.137.

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[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit 3 pertains to a pending criminal investigation. Based on your representation, we conclude that section 552.108(a)(1) is applicable to Exhibit 3. *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).

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. *See* 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. *See id.* You state that Exhibit 2 pertains to a criminal investigation conducted by the city’s Office of Inspector General (the “OIG”) for which the Harris County District Attorney’s Office declined prosecution. We understand that the OIG was established by Executive Order of the Mayor in February 1988 as a central authority to investigate allegations of city employee misconduct, both criminal and administrative. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibit 2.

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 186-88. The city must release basic information in Exhibits 2 and 3, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* 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 city may withhold Exhibits 2 and 3 under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code.²

In summary, (1) with the exception of basic information, the city may withhold the information in Exhibit 3 under section 552.108(a)(1) of the Government Code; and (2) with the exception of basic information, the city may withhold the information in Exhibit 2 under section 552.108(a)(2) of the Government Code.

²As our ruling is dispositive, we do not address your other argument against disclosure.

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/sdk

Ref: ID# 338149

Enc. Submitted documents

c: Requestor
(w/o enclosures)