



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2009

Ms. T. Trisha Dang
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-04901

Dear Ms. Dang:

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# 339944.

The City of Corpus Christi (the "city") received a request for all written and recorded statements made by a specified individual and all dispatch and GPS tracking records related to a specified location. You state that you will release a portion of the requested information 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.

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 excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. You state that the City of Corpus Christi is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police officer's civil service file that the 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). 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).¹ *Abbott v. City of Corpus Christi*, 109

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov't Code §§ 143.051-143.055.

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 the department because of its investigation into a police officer’s misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under the Act. *See* Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, 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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You claim the submitted information is the subject of an internal affairs investigation and is exempt under section 143.089(g). We note, however, the submitted investigation records consist of law enforcement records that are maintained independently of any police officer’s personnel file. The city may not engraft the confidentiality afforded to records under section 143.089(g) to other records that exist independently of a police officer’s departmental file. Accordingly, you have failed to demonstrate the submitted information is confidential under section 143.089 of the Local Government Code, and it may not be withheld under section 552.101 of the Government Code. However, we will address your claim under section 552.108.

Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). 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 the submitted report pertains to an investigation that did not result in a conviction or deferred adjudication because the Nueces county district attorney declined to accept charges. Accordingly, we agree that section 552.108(a)(2) is applicable to the submitted information.

We note, however, that basic information, which is normally found on the front page of an offense report, is generally considered public and not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). *See also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In Open Records Decision No. 649 at 3 (1996), this office concluded that information contained in Computer-Aided Dispatch (“CAD”) reports is substantially the same as basic information specifically held to be public in *Houston Chronicle* and therefore is not excepted from public disclosure under section 552.108. *See also* Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in police dispatch records or radio logs and front page offense report information expressly held to be public in *Houston Chronicle*,

and thus, such information is generally public). The submitted information includes CAD reports pertaining to the address at issue. Therefore, as basic information, these reports may not be withheld under section 552.108 of the Government Code and must be released to the requestor.² With the exception of the information we have marked for release, the city may withhold the remaining submitted information under section 552.108(a)(2) of the Government Code.³

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 339944

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note that the information being released contains information that is confidential to the general public but to which the requestor has a special right of access under section 552.023 of the Government Code. If the city receives another request for this information from someone other than the requestor or the requestor's authorized representative, the city should seek another ruling from this office at that time.

³As our ruling is dispositive, we need not address your remaining argument against disclosure, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).