



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2009

Mr. Richard J. Navarro
Denton, Navarro, Rocha & Bernal
701 East Harrison, Suite 100
Harlingen, Texas 78550-9151

OR2009-07185

Dear Mr. Navarro:

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# 344107.

The Pharr Police Department (the "department"), which you represent, received a request for any and all documents pertaining to a specified investigation of a named individual, including all correspondence between the department and other entities, and all documents reflecting the ending of the employment relationship between the named individual and the City of Pharr (the "city"). You state that you have released information concerning the ending of the individual's employment relationship with the city. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.119, 552.130, 552.136, 552.137, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

¹We note that although you raise sections 552.1175 and 552.139 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claims that these sections apply to the submitted information.

²We assume that the representative samples of records submitted to this office are 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.

Initially, we note that some of the submitted information consists of grand jury subpoenas and records obtained pursuant to those grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. Open Records Decisions Nos. 513 (1988), 411, 398 (1983). *But see* Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion). We therefore conclude that the submitted grand jury subpoenas and the information gathered in response to those subpoenas are in the custody of the department as agent of the grand jury and are not subject to the Act. Thus, this ruling does not address the public availability of this information, which we have marked.

Next, we note the submitted information includes peace officer's accident reports completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the department with two of the three specified items of information regarding these accidents. Therefore, the department must withhold the accident report forms we have marked pursuant to section 550.065(b) of the Transportation Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential, such as section 143.089 of the Local Government Code. You state that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code 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).³ *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 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 chapter 552 of the Government Code. *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).

In this case, you state that the remaining information pertains to an internal affairs investigation that did not result in any discipline against the officer at issue. You inform us that Exhibits S, T, and U are maintained solely in the involved police officer’s departmental personnel file. Therefore, based on your representations and our review, we conclude that Exhibits S, T, and U must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. You also seek to withhold the remaining information as information contained in the officer’s personnel file. However, we note that this information is also maintained separate and apart from the internal affairs investigation. You state the department conducted a criminal investigation into the specified incident and that the remaining information was incorporated into the investigative file for that investigation. Thus, this information is also maintained independently from the department’s personnel files. The department 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 remaining information is confidential under section 143.089(g) of the Local Government Code, and it may not be withheld under section 552.101 of the Government Code.

Section 552.108(a)(1) of the Government Code exempts 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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information relates to a pending criminal investigation. You also provide an affidavit from the Hidalgo County District Attorney’s Office which states it considers the case at issue to be an ongoing investigation. Based on your representation and our review of the remaining information, we conclude that release of this information would interfere

³Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See id.* §§ 143.051-.055.

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). Thus, section 552.108(a)(1) is applicable to the requested information.

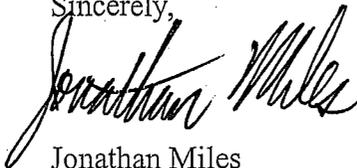
However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-8; see also Open Records Decision No. 127 (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) of the Government Code.⁴

In summary, the submitted grand jury subpoenas and the information gathered in response to those subpoenas, which we have marked, are in the grand jury's construction possession and are not subject to the Act. The department must withhold Exhibits S, T, and U under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

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

Ref: ID# 344107

Enc. Submitted documents

c: Requestor
(w/o enclosures)