



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 5, 2009

Ms. Pauline E. Higgins  
Sr. Vice President & General Counsel  
Metropolitan Transit Authority of Harris County  
P.O. Box 61429  
Houston, Texas 77208-1429

OR2009-07741

Dear Ms. Higgins:

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# 345262 (MTA No. 2009-0126).

The Metropolitan Transit Authority (the "authority") received a request for the requestor's personnel and training files, including information pertaining to all incidents or investigations regarding the requestor. You state the authority has provided or will provide some of the requested information to the requestor. You claim the submitted personnel forms, administrative investigation documents, and criminal investigation documents are 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 information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential, such as section 1701.306 of the Occupations Code, which provides in relevant part:

- (a) The [Texas Commission on Law Enforcement Officer Standards and Education] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). You claim the L-2 (Declaration of Medical Condition) and L-3 (Declaration of Psychological and Emotional Health) forms submitted as Exhibit 3 are confidential under section 1701.306 of the Occupations Code. Upon review, we agree the information in Exhibit 3 is confidential under section 1701.306 of the Occupations Code, and must be withheld under section 552.101 of the Government Code.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). 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 state the remaining information, which consists of professional standards administrative investigation documents submitted as Exhibit 4 and criminal investigation documents submitted as Exhibit 5, pertain to a pending criminal prosecution. You explain the authority’s police department (the “department”) conducted both investigations, and the department used the administrative investigation information in its criminal investigation. You assert the Harris County District Attorney’s Office, which is prosecuting the criminal case, is using the investigation information in Exhibits 4 and 5 in its prosecution of the case, and has requested the information be withheld from disclosure because release of the information would hinder the pending prosecution. Based on your representations and our review, we determine the release of this 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).

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

information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88. Thus, with the exception of basic information, the authority may withhold the remaining information pursuant to section 552.108(a)(1) of the Government Code.<sup>1</sup> We note you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the L-2 and L-3 forms in Exhibit 3 must be withheld under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. With the exception of basic information, the remaining information may be withheld 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](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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 345262

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling for this information is dispositive, we need not address your remaining argument against disclosure for a portion of this information.