



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2010

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2010-10996

Dear Ms. Cohen:

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# 387601 (ORA# 10-1005).

The Department of Public Safety (the "department") received a request for (1) a named officer's personnel records and (2) incident or arrest reports written or sponsored by the named officer during a specified time period. You state that the department has provided the requestor with some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 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 encompasses information other statutes make confidential. Section 411.00755 of the Government Code provides in pertinent part:

(b) The personnel records of a commissioned officer of the department may not be disclosed or otherwise made available to the public, except the department shall release in accordance with Chapter 552:

(1) any letter, memorandum, or document relating to:

...

(B) misconduct by the officer, if the letter, memorandum, or document resulted in disciplinary action[.]

Id. § 411.00755(b). Section 411.00755 defines a personnel record, in part, as “any letter memorandum, or document maintained by the department that relates to a commissioned officer of the department[.]” *Id.* § 411.00755(a). For purposes of section 411.00755, “disciplinary action” means discharge, suspension, or demotion. *Id.* § 411.0072(a)(1).

You state the personnel information you have marked pertains to complaints against the named officer that did not result in disciplinary action against the officer. Based on your representation and our review of the submitted information, we conclude the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 411.00755 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[.]” *Id.* §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.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information you have marked under section 552.108 relates to ongoing criminal cases. Based on your representation and our review of the submitted information, we conclude that 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). Thus, section 552.108(a)(1) is applicable to the information at issue.

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 Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that basic information described in *Houston Chronicle* does not include Texas motor vehicle record information subject to section 552.130 of the Government Code or criminal history record information subject to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. Therefore, with the exception of basic information, the department

may withhold the information you have marked under section 552.108(a)(1) of the Government Code.¹

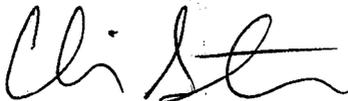
Finally, we note that in the request for information, the requestor argues that the information at issue must be released pursuant to section 143.089 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). However, we note the provisions of chapter 143 of the Local Government Code only apply to civil service cities. In this instance, the information at issue is held by the department and not by a civil service city. Accordingly, section 143.089 is inapplicable to the information at issue.

In summary, (1) the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code; and (2) with the exception of basic information, which must be released, the department may withhold the information you have marked 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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 387601

Enc. Submitted documents

c: Requestor
(w/o enclosures)