



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2011

Mr. Quentin D. Price  
First Assistant City Attorney  
Legal Department  
City of Beaumont  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2011-05826

Dear Mr. Price:

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# 415733.

The Beaumont Police Department (the "department") received a request for copies of any and all use of force reports completed by five named officers. You claim the submitted IA Pro printouts and their attachments are 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.

Initially, we note the submitted records are subject to section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The printouts and attachments are completed reports and document completed investigations made by the department. Pursuant to section 552.022(a)(1) of the Government Code, these records are expressly public unless they are either excepted under section 552.108 of the Government Code or are expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception that protects a governmental body's interest and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Consequently, the submitted records may not be withheld under section 552.103 of the Government Code. However, because information subject to section 552.022(a)(1) may be excepted under section 552.108 of the Government Code, we will address your argument under this exception. Additionally, because section 552.101 of the Government Code is other law for purposes of section 552.022, we will consider your argument under this exception as well.

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 protected by other statutes such as section 143.089 of the Local Government Code. You state the City of Beaumont (the "city") is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files relating to a police officer: 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. *See Local Gov't Code* § 143.089(a), (g). Information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You have clearly identified the records you state contain information that is protected under section 143.089(g). Accordingly, we only address your arguments under this section for these records. You state the information in these records is maintained in the department's internal file pursuant to section 143.089(g). You also state, and these records generally reflect, that this information relates to incidents wherein no disciplinary action was taken against any officers.<sup>1</sup> However, as you acknowledge, use of force reports were the subject of prior litigation between the city and this office. *See City of Beaumont v. Abbott, Attorney Gen. of Tex.*, No. D-1-GV-07-002630 (345<sup>th</sup> Dist. Ct., Travis County, Tex., Oct. 26, 2010). As part of the subsequent settlement agreement, the parties agreed that the IA Pro printouts

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<sup>1</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051–.055.

were not confidential under section 143.089(g) in their entirety. Instead, the parties agreed that only portions of the printouts were confidential under this section. *See id.* (IA Pro printouts, as redacted by this office, subject to disclosure). You did not mark the information subject to section 143.089(g) in the submitted IA Pro printouts. Thus, after reviewing the printouts, litigation records, and comments submitted by Assistant City Attorney Judith Sachitano Rawls, we marked the portions of the printouts that must be withheld under section 143.089(g) of the Local Government Code consistent with the settlement agreement. We also note you identified some of the Force Incident Reports, Force Incident Data Reports, and Supervisory Taser Use Reports attached to select printouts as being confidential under section 143.089(g). However, based on the settlement agreement, these reports are not confidential under section 143.089(g). *See id.* (Force Incident Reports, also known as Force Incident Data Reports, and Supervisory Taser Use Reports subject to disclosure). Thus, these reports are not confidential under section 143.089(g).

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We find the Supervisory Taser Use Report and Force Incident Data Report attached to the printout for case number 2009018538, and the Force Incident Data Report attached to the printout for case number 2009-003090, contain information that is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we marked in these reports under section 552.101 of the Government Code in conjunction with common-law privacy.

You raise section 552.108 for the printouts and attachments for case numbers 2008-024284 and 2010-16957. 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: (1) 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 release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and did not involve the criminal investigation or prosecution of an officer’s alleged misconduct. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex.

App.—Austin 2002, no pet.) (section 552.108 not applicable to information police department holds as employer). You claim section 552.108(a)(1) for the printouts and attachments for case numbers 2008-024284 and 2010-16957 because the underlying crimes are still being investigated. However, most of the information in these records pertains to the use of force by the officers and not to the underlying crimes. You do not explain how the release of this information will interfere with the detection, investigation, or prosecution of the underlying crimes. Furthermore, to the extent these records do reference the underlying crimes, most of this information is basic information under section 552.108(c) of the Government Code. Section 552.108(c) of the Government Code does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c); 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); see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note, however, that the summary and “describe incident in detail” portions of the printout and attachment for case number 2010-16957, and the portion of the attachment for case number 2008-024284 listing the reasons for probable cause, contain more than basic information concerning the underlying crimes. Therefore, section 552.108(a)(1) of the Government Code is generally applicable to the marked portions of case numbers 2008-024284 and 2010-16957. However, basic information includes a detailed description of the offense. *Id.* Thus, the department must release a detailed description of the offense from the portions of these records marked under section 552.108(a)(1).

Lastly, section 552.130 of the Government Code excepts from disclosure information that relates to “(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.” Gov’t Code § 552.130(a)(1)-(3).<sup>2</sup> Accordingly, the department must withhold the Texas driver’s license number, Texas license plate numbers, and Texas identification number we marked under section 552.130 of the Government Code. As you raise not further exceptions to disclosure, the remaining information must be released.

In summary, the department must withhold the information we marked under section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code. The information we marked in the Supervisory Taser Use Report and Force Incident Data Report attached to the printout for case number 2009018538, and the Force Incident Data Report attached to the printout for case number 2009-003090, must be withheld under section 552.101 in conjunction with common-law privacy. With the

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

exception of a detailed description of the offenses, the department may withhold the information marked under section 552.108(a)(1) of the Government Code in the printouts and attachments for case numbers 2008-024284 and 2010-16957. Finally, the department must withhold the information marked under section 552.130 of the Government Code. The remaining information must be released.

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, toll free at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/sdk

Ref: ID# 415733

Enc. Submitted documents

c: Requestor  
(w/o enclosures)