



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2012

Mr. Norman Ray Giles
For City of Pasadena
Chamberlin, Hrdlicka, White, Williams & Aughtry
1200 Smith Street, Suite 1400
Houston, Texas 77002

OR2012-18130

Dear Mr. Giles:

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# 470943.

The Pasadena Police Department (the "department") received a request for any and all reports involving a named individual in two specified cases. You state some of the information has been released. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ 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. Section 552.101 encompasses section 143.089 of the Local Government Code. We understand the City of Pasadena 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). The police officer's civil service file must contain specific items,

¹We note the department refers to the executive, law enforcement, critical analysis, and official information privileges. As we are unable to discern what exceptions under the Act the department refers to, we do not address these arguments.

including commendations, periodic evaluations by the officer's supervisor, and documents from the employing department relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code.² See *id.* § 143.089(a)(1)–(2). In cases in which a police department investigates an 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). *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, a document relating to an officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the police department and that is maintained in a police department's internal personnel file pursuant to section 143.089(g) is confidential and must not be released. *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. Tex. Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied).

You state the information in Exhibit C is maintained in the department's files under section 143.089(g) and that it relates to investigations that have not resulted in disciplinary action under chapter 143. We note, however, the information at issue consists of law enforcement records, which are also maintained separate and apart from the internal affairs investigations. The present request does not specifically seek information from an officer's personnel file maintained by the department. Instead, the requestor seeks information related to two specified cases. Because the requestor generally seeks information pertaining to the specified cases, both information in an officer's personnel file and any copies of investigatory materials the department maintains for law enforcement purposes are responsive. The department may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Accordingly, we find the information in Exhibit C is not confidential under section 143.089(g) of the Local Government Code and may not be withheld under section 552.101 of the Government Code on that basis.

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov't Code §§ 143.051-.055.

You claim the submitted information is protected from disclosure by the constitutional doctrine embodied in *Garrity v. New Jersey*, 385 U.S. 493 (1967), and *Spevack v. Klein*, 385 U.S. 511 (1967).³ Both *Garrity* and *Spevack* dealt with the constitutional prohibition against self-incrimination in court or other judicial proceedings. See *Spevack*, 385 U.S. 511, *Garrity*, 385 U.S. 493. Thus, neither *Garrity* nor *Spevack* is applicable here because the submitted information is released in response to a request under the Act and not used as evidence in a criminal prosecution or other judicial proceeding. Therefore, we find these cases provide no basis for withholding the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. See *id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). In this instance, the information in Exhibit B contains documents that relate to an internal affairs investigation. Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *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 also Open Records Decision No. 350 at 3–4 (1982). However, you state, and provide an affidavit from the department's custodian of records to support the assertion, the information in Exhibit B “deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” Based on these representations, we agree section 552.108(a)(2) of the Government Code is applicable to all the information in Exhibit B.

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). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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 Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, which you state you have released, the department

³Section 552.101 of the Government Code encompasses information made confidential by constitutional law.

may withhold the information in Exhibit B under section 552.108(a)(2) of the Government Code.⁴

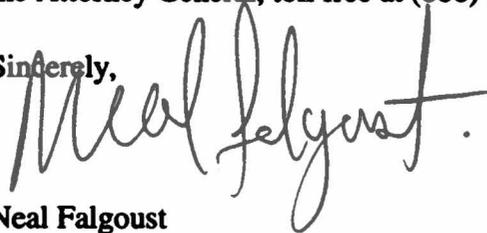
Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). Accordingly, the department must withhold the information we have indicated in the submitted photographs under section 552.130 of the Government Code.⁵

In summary, with the exception of basic information, the department may withhold the information in Exhibit B under section 552.108(a)(2) of the Government Code. The department must withhold the information we have indicated in the submitted photographs 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, 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

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⁴As our ruling is dispositive, we do not address your remaining argument against disclosure for this information.

⁵Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies permitting them to withhold certain categories of information, including a Texas license plate number under section 552.130 of the Government Code, without requesting a decision from this office.

Ref: ID# 470943

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**