



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 4, 2013

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2013-05392

Dear Mr. Weir:

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# 483237 (COSA File No. W011958).

The City of San Antonio (the "city") received a request for the following categories of information: (1) the criminal investigation file in the city's police department case 12177570; (2) the administrative investigation file in the city police department Internal Affairs Unit case IL2012-0390; and (3) a patient care report in the city's fire department case 1208090004. You state the city is releasing the requested patient care report to the requestor. You claim the remaining requested information is 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.

Initially, we must address the city's obligation under section 552.301(b) of the Government Code, which requires a governmental body to ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). The city received the request for information on December 4, 2012. Thus, the ten-business-day deadline to request a decision from this office was December 18, 2012. The envelope in which the department sent its request for a ruling is post-marked January 28, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail and common or contract carrier). Thus, we find the city failed to comply with section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to

withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). You claim an exception to disclosure under section 552.108 of the Government Code, which is a discretionary exception that may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Because you failed to comply with section 552.301, you have waived your claims under section 552.108. However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You inform us, and provide a letter stating, the Bexar County Criminal District Attorney's Office (the "district attorney's office") asserts the information at issue should be withheld under section 552.108 of the Government Code. Therefore, we will consider whether the information at issue may be withheld on behalf of the district attorney's office under section 552.108. Furthermore, because section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will consider the applicability of this exception to the submitted information.

Next, we note some of the submitted information consists of court-filed documents. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is made confidential under the Act or other law. *See* Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, that is a discretionary exception to disclosure, which protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential for purposes of section 552.022(a)(17). Thus, the city may not withhold the court-filed documents we have marked under section 552.108 of the Government Code. As you raise no further exceptions for this information, it must be released. We will consider your arguments for the remaining information that is not subject to section 552.022.

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 made confidential by other statutes, such as section 143.089 of the Local Government Code. We understand the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code 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). The officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. 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). *See Abbott v. 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 are in the 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 may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local 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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the information in Exhibit 3 is contained in the personnel file of a police officer that is maintained by the city's police department under section 143.089(g). You state the administrative investigation to which the information pertains has not resulted in disciplinary action under chapter 143 of the Local Government Code. Based on your representations and our review, we conclude the city must generally withhold Exhibit 3, including one of the compact disks that we have marked, under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, Exhibit 3 includes criminal investigation records that are also maintained independently from the city police department officer's personnel file. In this instance, the requestor has specifically requested these criminal investigation records, which the city's police department maintains for law enforcement purposes separate and apart from its internal files. The city may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Thus, the law enforcement records are 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. Accordingly, we find the information in Exhibit 3 that is maintained solely in the city police department's internal investigative file, including the compact disk that we have marked, is confidential under section 143.089 and must be withheld under section 552.101 of the Government Code. However, the remaining information in Exhibit 3 that is also maintained independently of the city police department's internal investigative file is not confidential under section 143.089 and may not be withheld under section 552.101 of the Government Code on

that basis. We will therefore consider your additional argument against disclosure with respect to the law enforcement records maintained independently of the internal file.

Section 552.108(a) 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). Generally, 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), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You inform this office, and provide documentation reflecting, the district attorney’s office objects to release of the information at issue because release would interfere with a pending criminal investigation and prosecution. Based upon this representation, we conclude the release of the information in Exhibit 2, as well as the information we have marked in Exhibit 3, including the compact disk we have marked, 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the city may generally withhold the information in Exhibit 2, as well as the information we have marked in Exhibit 3, and the marked compact disk, under section 552.108(a)(1) of the Government Code, on behalf of the district attorney’s office.

We note, however, that the submitted information includes a DIC-24 statutory warning and a DIC-25 notice of suspension. The city’s police department provided copies of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code § 552.108(a)(1)*. Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108.

Additionally, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also Open Records Decision No. 127 (1976)* (summarizing types of information considered to be basic information). Accordingly, with the exception of the DIC-24 and DIC-25 forms and basic information, the city may withhold Exhibit 2, as well as the information we have marked in Exhibit 3, and the marked compact disk, under section 552.108(a)(1) of the Government Code.

In summary, the city must release the court-filed documents we marked pursuant to section 552.022(a)(17) of the Government Code. The city must withhold Exhibit 3, including the compact disk that we have marked, under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. With the exception of the DIC-24 and DIC-25 forms and basic information, the city may withhold Exhibit 2, as well as the information we have marked in Exhibit 3, and the marked compact disk, under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/dls

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<sup>1</sup>We note the information being released includes the requestor's personal information and driver's license number. Ordinarily, this information would be withheld under sections 552.117 and 552.130 of the Government Code. However, because this information belongs to the requestor, it may not be withheld in this instance. See Gov't Code § 552.023. We note section 552.024(c) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee to whom the information pertains timely chooses not to allow public access to the information. See Gov't Code § 552.024(c)(2). Thus, if the city receives another request for the submitted information from a different requestor, section 552.024(c) authorizes the city to withhold the requestor's personal information if he has timely chosen not to allow access to the information. Additionally, section 552.130(c) authorizes a governmental body to redact information protected by section 552.130(a)(1) and (a)(3) without the necessity of requesting a decision under the Act. See *id.* § 552.130(c). *But see id.* § 552.130(d)-(e). Thus, if the city receives another request for this information from a person who does not have such a right of access, section 552.130(c) authorizes the city to redact the requestor's driver's license.

Ref: ID# 483237

Enc. Submitted documents

c: Requestor  
(w/o enclosures)