



February 27, 2015

Ms. Tiffany Evans  
Assistant City Attorney  
Legal Department  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2015-03985

Dear Ms. Evans:

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# 555703 (GC Nos. 22001, 22002, and 22003).

The City of Houston (the "city") received three requests from different requestors for information pertaining to a specified incident involving a named individual and a specified police officer, including (1) the involved police officers' information, including their identities, dates of hire, academy graduation dates, complaints and determinations, and the city's police department's policies and procedures pertaining to the treatment of citizens documenting public employees' activities; (2) 9-1-1 tapes and dispatch transcripts; and (3) all audio and visual recordings, transcript of the CAD/MDT log from the vehicles involved, non-emergency telephone calls, and all reports, filings, complaints, sworn statements, affidavits, and other documents produced.<sup>1</sup> You state some information was released to one of the requestors. You claim the submitted information is excepted from disclosure under

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<sup>1</sup>We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by a requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses section 143.1214 of the Local Government Code, which provides:

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department's use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

- (1) to another law enforcement agency or fire department;
- (2) to the office of a district or United States attorney; or
- (3) in accordance with Subsection (c).

(c) The department head or the department head's designee may forward a document that relates to a disciplinary action against a fire fighter or police officer to the [civil service] director or the director's designee for inclusion in the fire fighter's or police officer's personnel file maintained under Sections 143.089(a)-(f) [of the Local Government Code] only if:

- (1) disciplinary action was actually taken against the fire fighter or police officer;
- (2) the document shows the disciplinary action taken; and
- (3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

Local Gov't Code § 143.1214(b)-(c). You state the submitted information pertains to an open investigation by the Houston Police Department's Internal Affairs Division of alleged misconduct by a police officer. You also state the requestor is not an employee of another law enforcement agency, fire department, or the office of a district or United States attorney. *See id.* § 143.1214(b). However, the submitted information consists of an event history

report and a 9-1-1 audio recording, which are maintained independently from the police officer's personnel file. In this instance, the requestors have specifically requested any reports and 9-1-1 recordings, which are maintained for law enforcement purposes separate and apart from any internal files. The city may not engraft the confidentiality afforded to records under section 143.1214 to records that exist independently of the internal files. Thus, the submitted information is not confidential under section 143.1214 of the Local Government Code and may not be withheld under section 552.101 of the Government Code on that basis.

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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the Houston Police Department seeks to withhold the submitted information because it pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is applicable to the submitted information. *See Open Records Decision Nos. 372 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of law enforcement information).*

Section 552.108, however, 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 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 Open Records Decision No. 127 (1976) (summarizing types of information made public by Houston Chronicle).* We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See ORD 127 at 3-4.* Thus, except for basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(2) 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lauren Dahlstein  
Assistant Attorney General  
Open Records Division

LMD/som

Ref: ID# 555703

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)