



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2015

Ms. Evelyn W. Kimeu
Staff Attorney
Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2015-06952

Dear Ms. Kimeu:

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# 560232 (ORU No.15-0458).

The Houston Police Department (the "department") received a request for information pertaining to three specified investigations. You claim portions of the submitted information are 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 representative sample of information.¹

Initially, you inform us Exhibits 3, 4, 6, 7, 8, 9, 10, and 11 were the subjects of a previous request for information, in response to which this office issued Open Records Letter No. 2014-17433 (2014). In Open Records Letter No. 2014-17433, we concluded the department must withhold certain information under section 552.101 of the Government Code in conjunction with sections 143.1214 and 143.089(g) of the Local Government Code and, with the exception of basic information, may withhold certain information under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. You inform

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

us the law, facts, and circumstances on which the prior ruling on the information in Exhibits 3, 4, 6, 7, 8, 9, 10, and 11 was based have not changed. Accordingly, the department must continue to rely on Open Records Letter No. 2014-17433 as a previous determination and withhold or release Exhibits 3, 4, 6, 7, 8, 9, 10, and 11 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Next, we address your arguments against the disclosure of the submitted information that is not subject to this prior ruling.

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 of the Government Code encompasses section 143.1214 of the Local Government Code. We understand the City of Houston is a civil service city under chapter 143 of the Local Government Code. Section 143.121 provides in relevant part:

(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 disciplinary action against a fire fighter or police officer to the 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) 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 Exhibit 2 consists of records of an internal investigation of alleged misconduct on the part of a department police officer. You inform us the allegations of misconduct in this investigation were sustained, disciplinary action was taken against the police officer, and all documents meeting the requirements of section 143.1214(c) were forwarded to the police officer's personnel file maintained under section 143.089(a) of the Local Government Code. *See id.* § 143.1214(b)(3), (c)(1)-(3). You inform us the information at issue is maintained in the department's investigatory files and is not part of the officer's civil service file. You state the requestor is not a representative of another law enforcement agency, a fire department, or the office of a district or United States attorney. *See id.* § 143.1214(b)(1)-(2). Based on your representations and our review, we agree Exhibit 2 is confidential under section 143.1214 of the Local Government Code and must be withheld under section 552.101 of the Government Code.

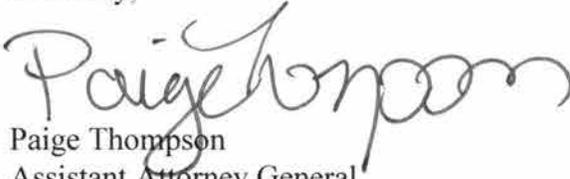
Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the 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). You state Exhibit 5 pertains to a pending criminal prosecution. Based on your representation, we conclude the release of the Exhibit 5 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 department may withhold Exhibit 5 under section 552.108(a)(1) of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2014-17433 as a previous determination and withhold or release Exhibits 3, 4, 6, 7, 8, 9, 10, and 11 in accordance with that ruling. The department must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. The department may withhold Exhibit 5 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.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,

A handwritten signature in black ink that reads "Paige Thompson". The signature is written in a cursive style with a large initial "P".

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 560232

Enc. Submitted documents

c: Requestor
(w/o enclosures)