



June 22, 1999

Mr. Steven J. Duskie
Police Legal Advisor
City of Corpus Christi
P.O. Box 9016
Corpus Christi, Texas 78469-9016

OR99-1712

Dear Mr. Duskie:

You have asked 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# 125101.

The City of Corpus Christi Police Department (the "department") received a request for a specified police offense report, a variety of information concerning the "Weed and Seed grant monies," and a specified incident involving "Cmdr. J. V. Garcia." In response to the request, you submit to this office for review a copy of the records and representative sample of the audio tapes at issue.¹ You assert that the submitted information is excepted from disclosure under section 552.108 and section 552.101 of the Government Code, in conjunction with section 143.089 of the Local Government Code. We have considered the exceptions and arguments you have raised and reviewed the submitted information.

Initially, we note that the current request appears to be related to a prior ruling from this office. In Open Records Letter No. 99-1642 (1999), this office addressed a request by the same individual for all information concerning a complaint and the investigation of that complaint. To the extent the current request overlaps with our earlier ruling, we advise the department to follow the conclusion reached in Open Records Letter No. 99-1642. As for any records responsive to this request or created since the prior request, we will consider your claimed exceptions.

¹We assume that 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.

As for Exhibits C and D, you argue that the information, including audio tapes and statements, are excepted from disclosure by section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes.

You represent that the requested information is maintained in the police department’s internal personnel file as outlined in section 143.089(g) of the Local Government Code. You explain that the City of Corpus Christi has adopted chapter 143 of the Local Government Code and is a civil service city. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the police department is required to maintain as part of the police officer’s civil service file, and one that the police department may maintain for its own internal use. Local Gov’t Code § 143.089(a), (g).

Section 143.089(g) reads as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department’s use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director [of the civil-service commission] or the director’s designee a person or agency that requests information that is maintained in the fire fighter’s or police officer’s personnel file.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil service commission. “The department may not release any information contained in the department file to any agency or person,” but instead “the department shall refer to the director [of the civil-service commission] or the director’s designee a person or agency that requests information that is maintained in the fire fighter’s or police officer’s personnel file.” Local Gov’t Code § 143.089(g); *see City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 952 (Tex. App.--Austin, 1993, writ denied).

In cases in which a police department takes disciplinary action against an officer, it is required by Local Government Code section 143.089(a)(2) to transfer records relating to the investigation and disciplinary action to the civil service commission. Such records may not be withheld under the Local Government Code’s provisions. Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). You explain that the complaint and investigation at issue did not result in any disciplinary action, as defined by the statute, against any police officers. Consequently, we agree that you must withhold the requested

information under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.²

As for Exhibit B, we next consider whether the claimed “law enforcement” exception allows the department to withhold the requested information. Section 552.108 of the Government Code provides in part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:
 - (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
 - (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.

....

- (c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov’t Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the submitted offense report is “currently pending prosecution.” Based on your representation, we believe that you have shown the applicability of section 552.108(a)(1). *See* Open Records Decision No. 586 (1991). Since the requested information, in Exhibit B, relates to pending criminal prosecution, we find that release of the requested information would interfere with the detection, investigation, or prosecution of

²As for Exhibits C and D, we note that the submitted records also include certain offense reports, which you contend are excepted from required disclosure pursuant to section 143.089 and section 552.101. In reliance on your representation that the offense reports are within the investigation file subject to section 143.089(g) confidentiality, we have not addressed the applicability of section 552.108 to the submitted offense reports.

crime. Accordingly, we conclude that the department may withhold most of the information in Exhibit B from the requestor based on section 552.108(a)(1).

As you are aware, certain basic information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public. *See* Gov't Code § 552.108(c). Section 552.108(c) provides that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *See generally 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); Open Records Decision No. 127 (1976). Therefore, we conclude that except for basic front page information the submitted information may be withheld under section 552.108(a)(1) of the Government Code. The department also has discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive, flowing style with a large initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 125101

Encl. Submitted documents

cc: Mr. Richard C. Stacey
Stacun Investigations
4535 S. Padre Island Drive
Corpus Christi, Texas 78411
(w/o enclosures)