



November 28, 2001

Ms. Mia Settle-Vinson
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-5529

Dear Ms. Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155333.

The City of Houston Police Department (the “department”) received a request for:

- (1) “documentation of all officer-involved shootings for the years 1997 and 1998, including but not limited to the incident number, date of incident, name of person injured or killed, employee name(s) and number(s), agency, internal coding, status and disposition of incident;” and
- (2) front page offense and arrest information and full incident reports for twenty-one incidents.

You indicate you will provide front page offense report information to the requestor. You also state that you will provide one of the twenty-one requested incident reports to the requestor. However, you state that you do not have responsive information regarding incident number 148378799. We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). However, you further contend that the information relating to the remaining nineteen

incidents is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that all of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108

Gov't Code § 552.022(a)(1). The submitted information consists entirely of completed investigations. Therefore, the information may be withheld only if it is excepted from public disclosure under section 552.108 or confidential under other law. Section 552.103 is a discretionary exception and is not other law for the purpose of section 552.022 of the Government Code. Open Records Decision No. 663 (1999) (governmental body may waive section 552.103). Therefore, we do not address whether any of the submitted information is excepted under section 552.103. However, we will address the remainder of your arguments.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. We understand that the city 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 police department 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). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the officer's civil service file maintained under section 143.089(a). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See id.* §§ 143.051-.055. Such records are subject to release under chapter 552 of the Government Code. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an officer's alleged

¹Because you do not seek to withhold the information responsive to the request for documentation of officer-involved shootings from 1997 and 1998, we assume you have released this information. To the extent you have not released this information, you must do so now. *See Gov't Code* §§ 552.021, .221, .301, .302.

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 an officer's employment relationship with the police department and that is 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. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.--San Antonio 2000, pet. filed); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

You state that Exhibits 3 through 21 are incorporated into and a part of the department's Internal Affairs Department's investigations. Furthermore, you indicate that none of these investigations resulted in disciplinary action, and therefore they are all maintained in the department's personnel files. Based on your statements and our review of the submitted information, we agree that the submitted information is confidential under section 143.089(g) of the Local Government Code to the extent the information is maintained solely in the department's personnel files.² However, we note that the submitted information relates to criminal investigations; therefore, some of the submitted information may exist outside of the department's personnel files. If the submitted information is also maintained by the department outside of the department's personnel files, the information is not confidential under section 143.089(g). We will therefore address your remaining arguments based on the contingency that the submitted information exists outside of the department's personnel files.

You contend that Exhibit 9 is confidential under section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

²Based on this finding, we need not reach your argument that the submitted information is also confidential under sections 143.1214(b) and 143.089(b) of the Local Government Code.

Exhibit 9 involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the requested information is confidential pursuant to section 58.007(c) of the Family Code. You must withhold Exhibit 9 from disclosure under section 552.101 of the Government Code.

We also note that Exhibit 10 is confidential under section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because Exhibit 10 relates to an allegation of child abuse, it is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, Exhibit 10 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold Exhibit 10 from disclosure under section 552.101 of the Government Code as information made confidential by law. Furthermore, because section 261.201(a) protects all "files, reports, communications, and working papers" related to an investigation of child abuse, the city must not release front page offense report information in cases of alleged child abuse.

You also contend that Exhibits 3, 4, 6, 8, 14, 17, 18, and 19 are excepted from public disclosure under section 552.108 of the Government Code. Section 552.108 provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] 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

Generally, a governmental body claiming section 552.108(a)(1) 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(e)(1)(a); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).* On the other hand, a governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

You state that Exhibit 8 relates to a pending criminal investigation. Based upon this representation, we conclude that the release of Exhibit 8 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), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976)* (court delineates law enforcement interests that are present in active cases). Therefore, with the exception of basic information, which you indicate you have released, you may withhold Exhibit 8 from disclosure under section 552.108(a)(1). You further state that Exhibits 3, 4, 6, 14, 17, 18, and 19 pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree that, with the exception of basic information, you may withhold 3, 4, 6, 14, 17, 18, and 19 under section 552.108(a)(2).

We also note that the submitted documents contain information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must withhold the Texas driver's license numbers, vehicle identification numbers, and license plate numbers under section 552.130. We note, however, that section 552.130 is designed to protect the privacy interests of third parties, and the common law right to privacy expires upon death. Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981). Therefore, the driver's license numbers of deceased individuals are not excepted from disclosure under section 552.130.

Finally, we note that social security numbers contained in the submitted information may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, to the extent the submitted information is contained solely in the department's personnel files, the department must withhold the information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. If, however, the department maintains the information in Exhibit 9 or 10 somewhere other than its personnel files, the department must withhold the information in Exhibits 9 and 10 under section 552.101 of the Government Code in conjunction with sections 58.007 and 261.201 of the Family Code, respectively. Likewise, to the extent the department maintains the information in Exhibits 3, 4, 6, 8, 14, 17, 18, or 19 somewhere other than its personnel files, the department may withhold the information within these exhibits under section 552.108(a)(1) and (2) of the Government Code. The department must also withhold the Texas driver's license numbers, vehicle identification numbers, and license plate numbers contained within the submitted documents under section 552.130 of the Government Code. Similarly, the department must withhold the social security numbers contained within the submitted documents under section 552.101 and the federal Social Security Act to the extent it obtained or maintained the numbers pursuant to a provision of law enacted on or after October 1, 1990. To the extent the department maintains any of the remainder of the submitted information outside of its personnel files, it must release that information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 155333

Enc: Submitted documents

c: Ms. Arlene Kelly
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(w/o enclosures)