



September 18, 2002

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2002-5271

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168804.

The Austin Police Department (the “department”) received a request for department “records involving ‘use of force’ . . . and related [department] disciplinary records from 1990-July 2002. Please include (but not limited to)” fourteen listed incidents. You have provided documentation indicating that the department referred the requestor to the City of Austin Civil Service Commission in regard to the portion of the request seeking disciplinary records. *See* Local Gov’t Code § 143.089(g) (“The department shall refer to the director [of civil service] 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.”). In addition, you state that the requestor subsequently narrowed the request to include only information relating to the specifically listed incidents, which you claim are excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. *See* Gov’t Code § 552.222(b) (governmental body may confer with requestor for purposes of clarifying or narrowing request). We have considered the exceptions you claim and reviewed the submitted information.¹ We have also considered comments submitted by the requestor. *See* Gov’t Code § 552.304 (providing for submission of public comments).

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.

Initially, we address the scope of the request. The request states that it is not limited to information pertaining to the fourteen listed incidents but instead encompasses information about all use of force incidents during the relevant time period. The department asserts that the request has been narrowed. The requestor, on the other hand, contends that the "request is not limited; it specifically recites that the fourteen listed incidents are included within her request, but that the request is not limited to those incidents." This office is unable to make factual determinations or resolve factual disputes in the opinion process. *See* Attorney General Opinion JC-0534 at 1 (2002). We therefore rely on the department's representation that the request has been narrowed to include only information about the fourteen listed incidents and limit our ruling accordingly.

Next, we note that this office has recently ruled on one of the submitted police reports, 01-2081328. In Open Records Letter No. 2002-5174 (2002), this office determined that the department may withhold this report, with the exception of basic information, pursuant to section 552.108 of the Government Code. As the facts and circumstances surrounding that ruling do not appear to have changed, you may withhold report number 01-2081328, with the exception of basic information, in accordance with our previous ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (criteria of previous determination regarding specific information previously ruled on).

We now address your arguments regarding the other submitted offense reports. You assert that report number 96-1750372 is confidential by law. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses statutory confidentiality provisions. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). This office has concluded that section 58.007 of the Family Code, as enacted by the Seventy-fourth Legislature, does not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. Open Records Decision No. 644 (1996). The Seventy-fifth Legislature, however, amended section 58.007 to once again make juvenile law enforcement records confidential effective September 1, 1997. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon). The legislature chose not to make this most recent amendment retroactive in application. Consequently, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997, are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code. Report number 96-1750372 relates to conduct that occurred in June of 1996; accordingly, this report is not confidential and may not be withheld under section 552.101.

You also assert that all of the remaining submitted offense reports, including number 96-1750372, are excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a)(2) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals 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.” 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. However, section 552.108 is inapplicable to a police department’s internal administrative investigations that do not involve the investigation or prosecution of crime. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.–El Paso 1992, writ denied).

You indicate that report numbers 02-4889273, 01-4350037, 00-0910147, 00-0440420, 99-4173993, 99-0611662, 99-0331078, 99-0230128, 98-0231681, 97-2840019, 96-1750372, and 92-3431174 pertain to criminal investigations that have concluded in a result other than conviction or deferred adjudication. Based on your representation, and having reviewed the information at issue, we agree that section 552.108(a)(2) of the Government Code is applicable to these offense reports.

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov’t Code § 552.108(c); *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). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108 authorizes you to withhold the remaining information from the offense reports, you may choose to release all or part of the information that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

You also contend that the submitted “Use of Force Report” forms are excepted under section 552.108. However, these documents appear purely administrative in nature and do not indicate that they relate to criminal investigation of the officers involved. The department has not otherwise explained, nor do the reports on their face reflect, how these reports relate to the detection, investigation, or prosecution of crime. Accordingly, we find that the department has failed to demonstrate that section 552.108 applies to the “Use of Force Report” forms. *See Morales*, 840 S.W.2d at 526 (law enforcement exception is inapplicable to police department’s internal administrative investigations that do not involve investigation or prosecution of crime); *see also* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977) (governmental body claiming law enforcement exception must reasonably explain, if information does not supply explanation on its face, how and why release of requested information would interfere with law enforcement).

You also claim "Use of Force Report" 01-0985 is excepted from disclosure under section 552.103 of the Government Code. However, this document is a completed report, which is subject to section 552.022 and must be released unless excepted under section 552.108 or made confidential under other law. *See* Gov't Code § 552.022(a)(1). Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Thus you may not withhold "Use of Force Report" 01-0985 on the basis of section 552.103.

In summary, report number 01-2081328 may be withheld, with the exception of basic information, pursuant to Open Records Letter No. 2002-5174. Report numbers 02-4889273, 01-4350037, 00-0910147, 00-0440420, 99-4173993, 99-0611662, 99-0331078, 99-0230128, 98-0231681, 97-2840019, 96-1750372, and 92-3431174 may be withheld under section 552.108(a)(2); however, basic information must be released from these reports in accordance with section 552.108(c). The submitted "Use of Force Report" forms must be released.

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

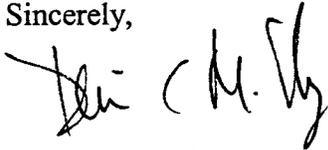
that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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); *Texas Department of Public 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 and 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 168804

Enc. Submitted documents

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