



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 23, 2007

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2007-10960

Dear Ms. Chang:

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# 287917.

The Houston Police Department (the "department") received a request for the employee identification pictures, all internal affairs investigations, disciplinary actions, and complaints of five police officers who responded to a 9-1-1 call at a specified address. The requestor also wants the 9-1-1 recording, name and license plate number of the alleged trespasser, the name and gender of the district attorney who consulted with one of the officers, and the cell phone numbers and companies used in this conversation. You claim that the responsive information is excepted from disclosure under sections 552.101, 552.108, 552.1175, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you note that the department does not have responsive information for the cellular phone companies because the cellular phones at issue are personal phones. You also state that the department does not have information regarding the cellular phone used by the district attorney or the gender of the district attorney because the district attorney is not an employee of the city. The Act does not require a governmental body to create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Because the department does not maintain this information, the information is not encompassed by the request, and we do not address it in this ruling. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San

---

<sup>1</sup>We 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.

Antonio 1978, writ dismiss'd); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at the time request was received).

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 143.1214 of the Local Government Code. Section 143.1214 provides in 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 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 that the information in Exhibits 5 and 6 is the Internal Affairs Division ("IAD") investigations of alleged misconduct by department officers. Furthermore, you state that the requestor is not another law enforcement agency or fire department or the office of a district or United States attorney. You inform us that the information in Exhibit 5 relates to an IAD investigation that did result in disciplinary action under chapter 143 of the Local Government Code. However, you inform us that the information in Exhibit 5 does not meet all of the conditions for release of investigatory files outlined in section 143.1214(c). You also state that Exhibit 6 relates to an investigation that did not result in disciplinary action. Thus, you indicate that Exhibit 6 is maintained in a

departmental file and is not part of the civil service personnel file. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(f). Based on your representations and our review, we conclude that Exhibits 5 and 6 are subject to section 143.1214 of the Local Government Code and must be withheld under section 552.101 of the Government Code.<sup>2</sup>

Section 552.108(a)(1) 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 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits 2, 3, and 4 pertain to an open and active criminal prosecution. Based on this representation, we conclude that the release of this information 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 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* and includes the identification and description of the complainant. *See* Open Records Decision No. 127 at 3 (1976). Thus, the department must release the requested name of the complainant in Exhibit 2, but may withhold the requested license plate number, district attorney’s name, and Exhibits 3 and 4 under section 552.108(a)(1).<sup>3</sup> The remaining information in Exhibit 2 is not responsive to the request for information, and the department is not required to release it pursuant to the request.

You claim section 552.119 for Exhibit 7. Section 552.119 of the Government Code provides:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

(1) the officer is under indictment or charged with an offense by information;

---

<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>3</sup>As our ruling is dispositive, we need not address you remaining argument against disclosure of this information.

(2) the officer is a party in a civil service hearing or a case in arbitration; or

(3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer.<sup>4</sup> In this instance, you state that none of the provisions in subsection (a) are applicable. After reviewing the department's arguments, we determine that the department has failed to demonstrate how the release of Exhibit 7 at this time would endanger the life or physical safety of this officer. Because you raise no other argument against disclosure of this information, Exhibit 7 must be released.

In summary, the department must withhold Exhibits 5 and 6 under section 552.101 in conjunction with section 143.1214 of the Local Government Code. With the exception of the complaint's name in Exhibit 2, the department may withhold the remaining requested information in Exhibit 2 and all of Exhibits 3 and 4 under section 552.108(a)(1). The remaining submitted information in Exhibit 2 is not responsive to this request and need not be released. The remaining responsive information 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, upon receiving this ruling, the governmental body

---

<sup>4</sup>We understand the department officers to be peace officers as defined by article 2.12 of the Code of Criminal Procedure.

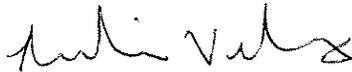
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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 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 Office of the Attorney General 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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jb

Ref: ID# 287917

Enc. Submitted documents

c: Mr. Gerald L. Garcia  
2534 Glen Avenue  
Houston, Texas 77088  
(w/o enclosures)