



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2010

Ms. Judi S. Rawls  
Assistant City Attorney  
City of Beaumont  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2010-02751

Dear Ms. Rawls:

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# 373930 (ORRs 12-87, 01-02, 01-23).

The City of Beaumont (the "city") received three requests for several categories of information pertaining to an officer-involved shooting and the officer involved in the incident. You state some information has been or will be released to the requestors. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. Further, you state the submitted information may implicate the interests of the officer involving in the shooting. Accordingly, you notified the Combined Law Enforcement Associations of Texas, which we understand represents the officer at issue, of its right to submit arguments to this office as to why the requested information should not be released.<sup>1</sup> See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted representative sample of

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<sup>1</sup>As of the date of this letter, we have not received any arguments on behalf of the officer at issue.

information.<sup>2</sup> We have also received and considered comments submitted by one of the requestors. *See id.*

Initially, you state Exhibit D is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, we understand you to argue that a portion of one of the requests requires the city to answer questions. The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). In this instance, we assume the city has made a good faith effort to locate any information responsive to these requests. Accordingly, we will address your claimed exceptions.

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. This section encompasses section 143.089 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police officer’s civil service file that the civil service director 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). The police officer’s civil service file must contain specific items, including commendations, periodic evaluations by the officer’s supervisor, and documents from the employing department relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code.<sup>3</sup> *See id.* § 143.089(a)(1)-(2). In cases in which a police department investigates an officer’s misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer’s civil service file maintained under section 143.089(a). *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are “from the employing department” when

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<sup>2</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.

<sup>3</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055.

they are held by or in possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under chapter 552 of the Government Code. See Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an officer's alleged 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 a police officer's employment relationship with the police department and that is maintained in a police department's internal personnel 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. denied); *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied).

You state that the city is a civil service city under chapter 143 of the Local Government Code. You state that Exhibit C is maintained in an officer's police department personnel file and pertains to an allegation that has not yet resulted in discipline. Based on your representation, section 143.089(g) is applicable. Thus, Exhibit C is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.<sup>4</sup>

Next, you claim Exhibit B is excepted from disclosure under section 552.108 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 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 that the information in Exhibit B relates to an ongoing criminal investigation. 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. 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). Accordingly, we find section 552.108(a)(1) is generally applicable to the information in Exhibit B.

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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. See 531

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<sup>4</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

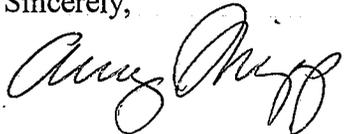
S.W.2d at 186-88. The city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold Exhibit B under section 552.108(a)(1) of the Government Code.<sup>5</sup>

In summary, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Except for basic information, the city may withhold Exhibit B 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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/rl

Ref: ID# 373930

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>5</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.