



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 21, 2010

Ms. Candice M. De La Garza  
Assistant City Attorney

Ms. Evelyn Njuguna  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001

OR2010-05675

Dear Ms. De La Garza and Ms. Njuguna:

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# 376751.

The Houston Police Department and the Houston Emergency Center (collectively the "department") received two requests from the same requestor for the incident report, administrative investigation, dispatch records, and audio recordings pertaining to a specified incident, as well as information from the personnel file of a named officer relating to the incident. You state the department will provide some of the responsive information to the requestor. You indicate the department does not have some of the requested information.<sup>1</sup> You claim the submitted information is exempted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge that the department failed to comply with the procedural requirements of section 552.301 of the Government Code with regards to the second request. *See* Gov't Code § 552.301(b). A governmental body's failure to comply with the

---

<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App. — San Antonio 1978, writ dismissed).

requirements of section 552.301 results in the legal presumption that the information is public and must be released. *Id.* §552.302. In order to overcome the presumption that the requested information is public information, a governmental body must provide a compelling reason why the information should not be disclosed. *See Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will consider your argument under this exception for the portion of the information that was not timely submitted.

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. Section 552.101 encompasses information protected by other statutes, including section 143.1214 of the Local Government Code. You state the City of Houston is a civil service city under chapter 143 of the Local Government Code. Section 143.1214 of the Local Government Code provides in relevant 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 disciplinary action against a fire fighter or police officer to the 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) 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 Exhibit 3 is an Internal Affairs Division ("IAD") investigation of alleged misconduct by a department officer and that the submitted event history record also pertains to this investigation.<sup>2</sup> You state that the allegations were sustained and that disciplinary action was taken. You further state that the department has forwarded the documents meeting the conditions of section 143.1214(c) to the officer's personnel file maintained under section 143.089(a) of the Local Government Code.<sup>3</sup> Thus, we understand that the information at issue does not meet all of the conditions of section 143.1214(c) for inclusion in the officer's civil service personnel file. Accordingly, the department must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code.<sup>4</sup> We note, however, that the event history record you seek to withhold under section 143.1214 is maintained independently from a police officer's personnel file. The department may not engraft the confidentiality afforded to records under section 143.1214 to other records that exist independently of the police department's internal files. Therefore, we conclude that this information, which we have marked, may not be withheld under section 552.101 in conjunction with section 143.1214.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. See Gov't Code 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. See *id.* §§ 552.108(a)(2), 302(e)(1)(A). You inform us that Exhibits 2 and 4 pertain to a case that concluded in a result other than conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to this information.

However, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. See Gov't Code § 552.108(c). Section 552.108 (c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 at 186-88 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes a detailed description of the offense. See also Open Records Decision No. 127.

---

<sup>2</sup>You have submitted two Exhibits labeled "Exhibit 2." Therefore, we will refer to the Exhibit 2 you submitted in response to the second request as the "event history record" for clarity.

<sup>3</sup>You state that the requestor will be directed to the city's human resources department for the responsive information.

<sup>4</sup>Our ruling is dispositive of the information you state is non-responsive with regards to the second request.

at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state will be released, the department may withhold Exhibits 2 and 4 under section 552.108(a)(2).

You have marked a social security number in the remaining information. We note this information is subject to section 552.1175 of the Government Code. Section 552.1175 in part provides:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). Accordingly, if the officer concerned elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, then the department must withhold information you have marked, as well as the additional information we have marked, under section 552.1175. If the officer does not elect to restrict access to the marked information, then the department may not withhold this information under section 552.1175.<sup>5</sup>

You have also marked portions of the remaining information under sections 552.130 of the Government Code. Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See id.* § 552.130(a)(1), (2). Upon review, we find the department must withhold the information we have marked under section 552.130. We note, however, that because section 552.130 protects personal privacy, the requestor has a right of access to his client's Texas motor vehicle record information

---

<sup>5</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147.

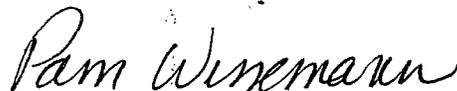
pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a), (b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, none of the remaining information you have marked may be withheld on that basis.

In summary, the department must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. With the exception of basic information, the department may withhold Exhibits 2 and 4 under section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked under section 552.1175 of the Government Code if the officer chooses to restrict access to this information. The department must withhold the information we have marked under section 552.130 of the Government Code.<sup>6</sup> The remaining information must be released.

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,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/cc

---

<sup>6</sup>We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. We further note that this requestor has a special right of access to some of the motor vehicle information being released that would otherwise be confidential with regard to the general public. See Gov't Code § 552.023(a). Accordingly, if the department receives another request for the information from an individual other than the individual with a right of access under section 552.023, the department is authorized to withhold the Texas license plate number being released under section 552.130 without the necessity of requesting an attorney general decision.

Ref: ID# 376751

Enc. Submitted documents

c: Requestor  
(w/o enclosures)