



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2010

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2010-07555

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# 380477.

The City of Houston (the "city") received a request for eight categories of information regarding a specified citation, including (1) internal affairs division ("IAD") files for a named police officer; (2) IAD files for the requestor's complaint against the officer; (3) the officer's statement to IAD; (4) the pertinent incident report; (5) a list of court appearances by a named city employee; (6) inter-vehicle radio transmissions relating to the citation; (7) reports from other officers who arrived on-scene; and (8) the name of the inspector who inspected sewer relining work on a particular city street during a specified time interval. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted. We also have considered comments submitted by the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

With regard to the rest of the requested information, you state that the Houston Police Department (the "police department") has no responsive information for items six and seven of this request for information. You also state that the police department is not the custodian for items five and eight of this request. The Act does not require a governmental body to release information that did not exist when it received a request, create responsive

information, or obtain information that is not held by the governmental body or on its behalf.¹ In this instance, however, the request for information is addressed to the city's legal department, rather than its police department. A governmental body that receives a request for information must make a good-faith effort to relate the request to any responsive information that is within the governmental body's possession or control.² Therefore, the city must make a good-faith effort to identify any information maintained by or on behalf of the city that is responsive to items five, six, seven, or eight of this request. Any such information must be released immediately, to the extent it existed when the city received this request. *See* Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

We also note that employee identification numbers have been redacted from the information submitted as Exhibit 3. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code §§ 552.301, .302. Pursuant to section 552.301(e)(1)(D), the governmental body must submit the specific information at issue to this office, or submit representative samples if the information is voluminous, except to the extent that the information is the subject of a previous determination. *See id.* § 552.301(a), (e)(1)(D); Open Records Decision No. 673 (2001) (previous determinations). In this instance, we are able to ascertain the nature of the redacted information and thus are able to determine whether it is excepted from disclosure. For future reference, however, the city should refrain from redacting any information from records that are submitted to this office in connection with a request for a decision under the Act, unless the information is encompassed by a previous determination or by section 552.147(b).

Next, we address the city's exceptions to disclosure of the submitted information. 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 exception encompasses information that other statutes make confidential. You claim section 552.101 in conjunction with section 143.1214 of the Local Government Code, which 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*See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

²*See* Open Records Decision No. 561 at 8-9 (1990).

- (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).³ You state that the information submitted as Exhibit 2 pertains to an investigation conducted by the internal affairs division of the police department of a police officer's alleged misconduct. You explain that no disciplinary action was taken against the officer as a result of the investigation. You also state that the requestor is not another law enforcement agency or fire department or a representative of the office of a district or United States attorney. Thus, you contend that Exhibit 2 is confidential under section 143.1214 of the Local Government Code. Based on your representations and our review of the information at issue, we agree that Exhibit 2 is confidential under section 143.1214 and must be withheld from the requestor on that basis under section 552.101 of the Government Code. *See* Open Records Decision No. 642 (1996) (concluding that files relating to investigations of Houston Fire Department personnel by Public Integrity Review Group of Houston Police Department were confidential under Local Gov't Code § 143.1214).

Section 552.108(a)(2) 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 . . . 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[.]" Gov't Code § 552.108(a)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section

³We understand that the city is a civil service city under chapter 143 of the Local Government Code.

552.108(a)(2) is applicable only if the information in question is related to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. You contend that the information submitted as Exhibit 3 is related to a criminal investigation that did not result in a conviction or a deferred adjudication. You also state, however, that the investigation "was concluded by a determination to issue a citation for selling goods without a permit." You have provided no explanation of the ultimate disposition of the citation, and Exhibit 3 contains no such information. The request for information specifically states, however, that "the fine for [the citation] has been paid[.]" Thus, as you have not accounted for the outcome of the citation, and the requestor states that it resulted in the payment of a fine, we find that Exhibit 3 is not related to an investigation that concluded in a result other than a conviction or a deferred adjudication. We therefore conclude that the city may not withhold Exhibit 3 under section 552.108(a)(2) of the Government Code.

We note that section 552.136 of the Government Code is applicable to the redacted employee identification numbers in Exhibit 3.⁴ Section 552.136(b) provides that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We understand that the redacted employee identification numbers also are used as financial account numbers by employees of the police department and that release of these numbers may give a person access to the employees' financial accounts. We therefore conclude that the city must withhold the employee identification numbers under section 552.136.

In summary: (1) the city must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code; and (2) the city must withhold the employee identification numbers in Exhibit 3 under section 552.136 of the Government Code. The rest of the submitted information must be released.⁵

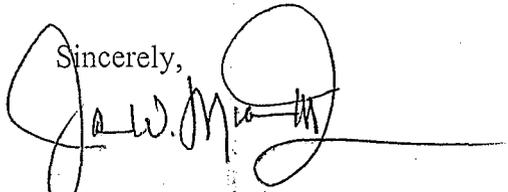
⁴This office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

⁵We note that the information to be released includes the requestor's Texas driver's license number, which the city would ordinarily be required to withhold under section 552.130 of the Government Code. Because section 552.130 protects personal privacy, the requestor has a right of access to his own driver's license number under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We further 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 without the necessity of requesting an attorney general decision, including a Texas driver's license number under section 552.130. Thus, should the city receive another request for these same records from a person other than one with a right of access to this requestor's Texas driver's license number, the city is authorized to withhold his driver's license number under section 552.130 without the necessity of requesting an attorney general decision.

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, 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/rl

Ref: ID# 380477

Enc: Submitted documents

c: Requestor
(w/o enclosures)