



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 3, 2011

Ms. Judi S. Rawls  
Police Administrative Legal Counsel  
Beaumont Police Department  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2011-11212

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# 425863 (Beaumont OR 05-70).

The Beaumont Police Department (the "department") received two requests for information related to a specified incident.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.119 of the Government Code.<sup>2</sup> You state you have notified the Beaumont Police Officer's Association and the officer involved in the incident of the request and their right to submit arguments as to why the information should not be released. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note two of the submitted compact discs ("CDs") are not responsive to the requests at issue because they pertain to an incident other than the one specified by the

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<sup>1</sup>You state the department sought and received clarification of one of the requests. *See Gov't Code* § 522.222(b) (stating if information requested is unclear or large amount has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

<sup>2</sup>Although you also raise section 552.1175 of the Government Code, section 552.117 is the proper exception to raise for information the department holds in its capacity as an employer.

requestors. This ruling does not address non-responsive information, and the department is not required to release it in response to these requests.

You state Exhibit B-2 is excepted under section 552.101 of the Government Code. Section 552.101 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 information made confidential by other statutes, such as section 143.089 of the Local Government Code. You state the City of Beaumont is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files for police officers in a civil service city: a civil service file the civil service director is required to maintain and an internal file the police department may maintain for its own use. Local Gov’t Code § 143.089(a), (g). The officer’s civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer’s supervisor, and documents relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055; *see* Attorney General Opinion JC-0257 (written reprimand is not disciplinary action for purposes of chapter 143 of the Local Government Code).

In cases in which a police department investigates a police 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). *See 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 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 the Act. *See* Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department’s internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the documents in Exhibit B-2 are maintained only in the department’s internal file pursuant to section 143.089(g) and pertain to an investigation into alleged misconduct in which no disciplinary action was taken. Upon review, we agree Exhibit B-2 constitutes an internal file maintained by the department for its own use and thus is confidential under section 143.089(g) of the Local Government Code. Accordingly, the department must withhold Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

You assert the remaining information, submitted as Exhibit B-1, is excepted from disclosure under section 552.108 of the Government Code. 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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the case at issue is still within the statute of limitations and may still be prosecuted. Based on your representation and our review, we conclude release of the remaining information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref’d per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code applies to the remaining information.

However, we note, and you acknowledge, 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*, and includes a detailed description of the offenses and the details of the arrest, including date, time, and place. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note the information you indicate has been released does not contain information sufficient to satisfy the requirements that a detailed description of the offenses and the details of the arrest be released. Accordingly, the department must release sufficient portions of the report to encompass detailed descriptions of the offenses charged and details of the arrest. The department may withhold the remaining information in Exhibit B-1 under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. With the exception of basic information, including detailed descriptions of the offenses charged and details of the arrest, the department may withhold Exhibit B-1 under section 552.108(a)(1) of the Government Code.<sup>3</sup>

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.

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<sup>3</sup>Because our ruling is dispositive, we do not address your remaining argument against disclosure.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/tf

Ref: ID # 425863

Enc. Submitted documents

c: Requestor  
(w/o enclosures)