



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2011

Ms. Candice M. Gambrell
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-11257

Dear Ms. Gambrell:

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# 426549 (GC No. 18637).

The Houston Police Department (the "department") received a request for information relating to a traffic accident, including records of any internal affairs or other investigations. You claim the requested 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.

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 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) 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 the information submitted as Exhibit 3 is maintained in the department's investigatory files. You do not indicate the requestor represents another law enforcement agency, fire department, or the office of a district or United States attorney. You explain Exhibit 3 is related to an internal affairs investigation in which allegations of misconduct by a police officer were sustained. You state the department has forwarded documents that meet the requirements of section 143.1214(c) to the officer's personnel file maintained under section 143.089(a). You indicate the information in Exhibit 3 does not meet the requirements of section 143.1214(c). Based on your representations and our review of the information at issue, we conclude 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. *See* Open Records Decision No. 642 (1996) (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 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). You state the information submitted as Exhibits 2 and 4 is related to a criminal investigation that did not result in a conviction or a deferred adjudication. You explain the department discontinued the investigation because of the complainant's failure to pursue charges. Based on your representations, we conclude section 552.108(a)(2) is generally applicable to Exhibits 2 and 4.

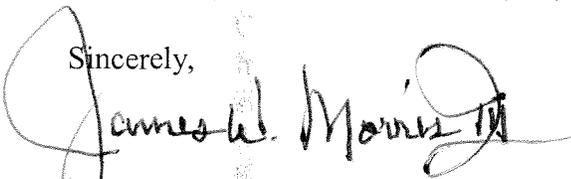
We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* 531 S.W.2d at 186-88. The department 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 deemed public by *Houston Chronicle*). The department may withhold the remaining information in Exhibits 2 and 4 under section 552.108(a)(2) of the Government Code.

In summary, the department (1) must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code and (2) may withhold Exhibits 2 and 4 under section 552.108(a)(2) of the Government Code, except for basic information under section 552.108(c).

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,



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

JWM/em

Ref: ID# 426549

Enc: Submitted information

c: Requestor
(w/o enclosures)