



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2011

Sergeant Rolando Avitia
Custodian of Records
Brownsville Police Department
600 East Jackson Street
Brownsville, Texas 78520

OR2011-18642

Dear Sergeant Avitia:

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# 439319.

The Brownsville Police Department (the "department") received a request for ten categories of information pertaining to a specified incident. You state the department has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note Exhibit C contains information that is subject to section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

- (17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Exhibit C contains a magistrate's warning that is subject to section 552.022(a)(17). The department may only withhold this information if it is confidential under other law. Although you seek to withhold the magistrate's warning under sections 552.103 and 552.108 of the Government Code, these exceptions are discretionary in nature and do not make information confidential under the Act. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, §§ 3-21, 23-26, 28-37 (providing for "confidentiality" of information under specified exceptions); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the magistrate's warning under section 552.103 or section 552.108. As you raise no further exceptions to the disclosure of this information, we have marked it for release pursuant to section 552.022(a)(17). However, we will consider your arguments under sections 552.101, 552.103, and 552.108 of the Government Code for the remaining information, which is not subject to section 552.022.

You raise section 552.108(a)(1) of the Government Code for the remaining information in Exhibit C that is not subject to section 552.022. 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 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). You state, and provide a letter from the Cameron County District Attorney's Office confirming, the information at issue is related to a pending criminal prosecution. Based on these representations and our review, we conclude 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. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we agree section 552.108(a)(1) is applicable to the remaining information in Exhibit C.

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which

you state has been released, the department may withhold the remaining information in Exhibit C under section 552.108(a)(1).¹

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 excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. We understand the City of Brownsville is a civil service city pursuant to chapter 143 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: a file that must be maintained by the civil service director as part of the officer’s civil service file, and an internal file that the police department may maintain for its own use. *See* 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. *Id.* § 143.089(a)(1)-(3). 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 (2000) (written reprimand is not disciplinary action for purposes of chapter 143). 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. 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 that reasonably relates to a police officer’s employment relationship with the department and that is 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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

Exhibit B consists of an internal affairs investigation of an officer involved in the specified incident. We understand this investigation did not result in any disciplinary action under chapter 143. You represent the information in Exhibit B is maintained in the department’s internal file pursuant to section 143.089(g). Based on your representations and our review,

¹As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure, except to note the basic information held to be public in *Houston Chronicle* is generally not excepted from disclosure under section 552.103. Open Records Decision No. 597 (1991).

we agree Exhibit B 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.

In summary, the department must release the magistrate's warning in Exhibit C we marked under section 552.022(a)(17) of the Government Code. With the exception of basic information, the department may withhold the remaining information in Exhibit C under section 552.108 of the Government Code. The department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. 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, 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 439319

Enc. Submitted documents

c: Requestor
(w/o enclosures)