



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 22, 2011

Mr. Benjamin Sampract  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2011-18921

Dear Mr. Sampract:

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# 439896 (PIR No. W012166).

The City of Fort Worth (the "city") received a request for (1) audio and video recordings, investigation records, and certain Global Positioning System records pertaining to a specified police investigation involving the requestor's named client and several named city police officers; (2) finalized settlement agreements related to allegations of the use of excessive force during police arrests; (3) training records and open records requests regarding a named police dog; (4) certain police policies and procedures; and (5) personnel records and open records requests pertaining to a named police officer. You have redacted from the submitted information certain employee information pursuant to section 552.024 of the Government Code,<sup>1</sup> a driver's license number pursuant to section 552.130(c) of the Government Code,<sup>2</sup>

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<sup>1</sup>Section 552.024(c) of the Government Code authorizes a governmental body to redact from public release a current or former official's or employee's home address, home telephone number, emergency contact information, social security number, and information that reveals whether the person has family members without the necessity of requesting a decision from this office under the Act, if the employee or official timely elected to withhold such information. Gov't Code § 552.024(a), (c).

<sup>2</sup>Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, a motor vehicle operator's or driver's license or permit issued by an agency of this state, or another state or country, and a personal identification document issued by an agency of this state, or another state or country, or a local agency authorized to issue an identification document. *Id.* § 552.130(c); *see id.* § 552.130(d) (entitling requestor to appeal governmental body's decision to withhold information pursuant to section 552.130(c) to attorney general), .130(e) (requiring governmental body that withholds information pursuant to section 552.130(c) to provide notice to requestor).

and a social security number pursuant to section 552.147 of the Government Code.<sup>3</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note you have not submitted any information responsive to the portions of the request pertaining to settlement agreements or open records requests. To the extent information responsive to those parts of the request existed on the date the city received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

Without limiting the amount or kind of information that is public information under [the Act], the following categories of information are public information and not excepted from required disclosure unless made confidential under [the Act] or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

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

Gov't Code § 552.022(a)(1), (17). The submitted information contains completed reports, investigations, and evaluations subject to section 552.022(a)(1), as well as court-filed documents subject to section 552.022(a)(17). Although you assert this information is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See 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 No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city

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<sup>3</sup>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 under the Act. *Id.* § 552.147(b).

may not withhold the information subject to section 552.022 under section 552.103 of the Government Code. You assert some of this information is excepted under section 552.101 of the Government Code, and we note some of the information may be subject to section 552.130 of the Government Code.<sup>4</sup> Because these sections make information confidential, we will address their applicability to the information subject to section 552.022.

Some of the documents subject to section 552.022 contain motor vehicle record information. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(1), (2). Therefore, the city must withhold the information we have marked in these documents under section 552.130 of the Government Code. As you have not claimed any other exceptions to disclosure for the remaining information in these documents, the city must release the remainder of these documents.

Some of the remaining information subject to section 552.022 consists of peace officers' accident reports that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). 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, such as section 550.065(b) of the Transportation Code, which states, except as provided by subsection (c) or subsection (e), accident reports are privileged for the confidential use of certain specified entities. *See* Transp. § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the city with at least two of the three items of information specified by section 550.065(c)(4). Therefore, the city must withhold the accident reports we have indicated under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Some of the remaining information subject to section 552.022 involves a fifteen-year-old arrestee suspected of burglary. Thus, we find this information, which we have indicated, involves juvenile delinquent conduct. *See id.* § 51.03(a) (defining juvenile “delinquent conduct” for the purposes of section 58.007). It does not appear any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find the information we have indicated is confidential under section 58.007(c) of the Family Code, and the city must withhold the information under section 552.101 of the Government Code.

You raise section 552.101 in conjunction with section 143.089 of the Local Government Code for some of the remaining information subject to section 552.022. You state the city is a civil service city under 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: one that must be maintained as part of the officer’s civil service file and another the police department may maintain for its own internal 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 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. 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 are in the 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 may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *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 some of the remaining information subject to section 552.022 is maintained in the city's police department's (the "department") internal files as authorized under section 143.089(g) of the Local Government Code. Based on this representation and our review, we agree portions of the information at issue, which we have indicated, are confidential pursuant to section 143.089(g). Accordingly, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

We note, however, some of the documents attached to internal affairs investigation number IA2009-0217 consist of law enforcement records (the "law enforcement records") pertaining to the investigation specified in the request. In this instance, the requestor has specifically requested these law enforcement records, which the department maintains for law enforcement purposes separate and apart from its internal files. The city may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Thus, the law enforcement records are not confidential under section 143.089(g) of the Local Government Code and may not be withheld under section 552.101 of the Government Code on that basis. Some of these law enforcement records are independently subject to section 552.022 when maintained separately from the completed internal affairs investigation and, as such, may not be withheld under section 552.103. Thus, the city must release these law enforcement records, which we have indicated.<sup>5</sup> We note, however, the remaining law enforcement records are not otherwise subject to section 552.022 when they are maintained separately from the completed internal affairs investigation. Thus, we will address your claim under section 552.103 of the Government Code for this information, along with the submitted information not subject to section 552.022 (collectively, the "remaining information").

Section 552.103 of the Government Code provides, in relevant part:

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<sup>5</sup>We note the information being released includes the requestor's client's motor vehicle record information, which is generally confidential under section 552.130 of the Government Code. Because section 552.130 protects a person's privacy, the requestor has a right of access to her client's private information under section 552.023(a) of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). If the city receives another request for this information from an individual other than this requestor, the city should again seek our decision.

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

*Id.* § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, the city received the request for information after a lawsuit styled *Malone v. City of Fort Worth*, Case No. 4:09-cv-00634-Y, was filed by the requestor's client in the United States District Court for the Northern District of Texas, Fort Worth Division. Based on your representation and our review, we conclude litigation involving the city was pending when the city received the request. You also state the remaining information is related to the pending litigation because the information pertains to the issues that help form the basis of the lawsuit. Based on your representations and our review, we find the remaining information is related to the pending litigation for purposes of section 552.103(a).

We note, however, basic factual information about a crime must be released. *See* Open Records Decision No. 362 (1983). Information normally found on the front page of a police offense report is generally considered public and must be released. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex Civ. App.—Houston [14th Dist. 1975, writ ref'd n.r.e.); Open Records Decision No. 127 (1976). Basic information includes the identification and description of the complainant and a detailed description of the offense. *See* ORD 127 at 3-4. Therefore, with the exception of basic information, the city may withhold the remaining information under section 552.103(a) of the Government Code.

We note, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information.

Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the city must withhold the information (1) we have marked under section 552.130 of the Government Code; (2) we have indicated under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; (3) we have indicated under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; and (4) we have indicated under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must release the documents we have indicated. With the exception of basic information, the city may withhold the remaining information under section 552.103(a) of the Government Code.

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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 439896

Enc. Submitted documents

c: Requestor  
(w/o enclosures)