



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2012

Mr. Quentin D. Price
First Assistant City Attorney
City of Beaumont
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2012-05192

Dear Mr. Price:

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# 450379 (ORR# 01-34).

The City of Beaumont (the "city") received a request for multiple categories of information related to a specified incident.¹ You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has excluded from his request the telephone numbers of witnesses, as well as the telephone number and home address of a named individual. Thus, these types of information are not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release any such information.

Next, we note the submitted information consists of completed investigations and an evaluation subject to section 552.022(a)(1) of the Government Code and a court-filed document subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or

¹You state the city sought and received verbal clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

²Based on the substance of your arguments, we understand you to raise section 552.103 of the Government Code.

investigation made of, for, or by a governmental body [,]" unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). Information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code and may only be withheld if expressly confidential under the Act or other law. *See id.* § 552.022(a)(17). You claim the court-filed document is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary exceptions that protect a governmental body's interests and do 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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the city may not withhold the court-filed document, which we have marked, under section 552.103 or section 552.108 of the Government Code. As you raise no further exceptions for the marked court-filed document, it must be released pursuant to section 552.022(a)(17) of the Government Code. Additionally, you raise section 552.103 for the completed investigation and evaluation. However, as previously noted, this section does not make information confidential for purposes of the Act. Therefore, the city may not withhold the completed investigations or evaluation under section 552.103. However, we will address whether the completed investigations and evaluation may be withheld under section 552.108 of the Government Code.

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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the remaining information concerns a criminal investigation and prosecution that did not result in conviction or deferred adjudication. We note the remaining information includes both a criminal investigation and an administrative investigation. Section 552.108(a)(2) is not applicable to records of an internal affairs investigation that is purely administrative in nature and did not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (section 552.108 not applicable to information police department holds as employer); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). Upon review, some of the submitted records reflect they were generated as part of an internal investigation conducted by the city's fire department that was purely administrative in nature or consist of personnel documents maintained by the city's fire department for

administrative purposes. You do not provide any arguments explaining how the internal investigation resulted in a criminal investigation or prosecution or how the submitted personnel documents at issue relate to a criminal investigation or prosecution. Accordingly, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to some of the submitted administrative records, and the city may not withhold them on that basis. Accordingly, the submitted administrative information, which we have marked for release, may not be withheld under section 552.108(a)(2). However, based on your representation and our review, we find section 552.108(a)(2) is generally applicable to the remaining information.

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). Basic information refers to the information held to be public in *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. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of basic information and the administrative information we have marked for release, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.

In summary, the city must release the marked court-filed document subject to section 552.022(a)(17) of the Government Code. With the exception of basic information and the administrative information we have marked for release, the city may withhold the remaining information under section 552.108(a)(2) 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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 450379

Enc. Submitted documents

c: Requestor
(w/o enclosures)