



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-06755

Dear Ms. Evans:

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# 453198 (GC No. 19403).

The City of Houston and the Houston Police Department (collectively, the "city") received a request for multiple categories of information related to a named officer and a specified incident. You claim that the submitted 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 submitted representative sample of information.¹

Initially, you state you have released some of the requested information. However, we note you have not submitted any information related to the orders and policies specified in the request. Further, although you inform us you have submitted a representative sample of the remaining requested information, we find the submitted information is not representative of the requested orders and policies. We further note the requested orders and policies may have been the subject of previous rulings of this office, including Open Records Letter No. 2011-06183 (2011). Thus, to the extent the law, facts, and circumstances on which the prior rulings were based have not changed, the city may continue to rely on those rulings as previous determinations and withhold or release the information at issue in accordance with them. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent information responsive to these portions of the request existed on the date the city received the request and are not encompassed by prior rulings of this office, including Open Records Letter No. 2011-06183, the city must release this information at this time. *See* Gov't Code §§ 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).

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 explain the information at issue is related to an internal affairs investigation regarding the named city police officer's alleged misconduct that has not yet resulted in disciplinary action. You also state that the information is maintained in the city police department's investigatory files and that the requestor is not another law enforcement agency or fire department or the office of a district or United States attorney. Further, you state that the information does not meet the requirements of section 143.1214(c) for inclusion in the police officer's civil service personnel file because the investigation is still pending and no disciplinary action has been taken. *See id.* § 143.1214(c); *see also* Local Gov't Code § 143.089(a)-(g). However, the submitted information includes offense reports that are also maintained independently from the city police department officer's personnel file. In this instance, the requestor has specifically requested these law enforcement records, which the city's police 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 143.1214 to records that exist independently of the internal files. Thus, the law enforcement records are not confidential under section 143.1214 of the Local Government Code and may not be withheld under section 552.101 of the Government Code on that basis. Accordingly, we find the information that is maintained solely in the city police department's internal investigative file is confidential under section 143.1214 and must be withheld under section 552.101 of the Government Code. However, the submitted offense reports, which we have marked, that are also maintained independently of the city police department's internal investigative file are not confidential under section 143.1214 and may not be withheld under section 552.101 of the Government Code on that basis. We will therefore consider your additional arguments against disclosure with respect to the law enforcement records maintained independently of the internal file.

Next, we note that the submitted law enforcement records include a crash report, which we have marked, that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items 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. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the city with two of the three specified items of information. Although you seek to withhold this information under section 552.108 of the Government Code, we note information that is specifically made public by statute may not be withheld from the public under any of the general exceptions to public disclosure found in the Act. *See, e.g.,* Open Records Decision Nos. 623 at 3 (1994), 544 (1990), 525 at 3 (1989), 378 (1983), 161 (1977), 146 (1976). Therefore, the city must release the marked crash report pursuant to section 550.065(c)(4) of the Transportation Code.

Section 552.108(a)(1) 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 . . . 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 incident report number 165748011 relates to an ongoing criminal investigation. Based on your representation and our review, we conclude release of information pertaining to incident report number 165748011, which we have marked, 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 delineates 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 is generally applicable to the information pertaining to incident report number 165748011.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state incident report number 166578511, which we have marked, relates to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Thus, section 552.108(a)(2) is generally applicable to the information we have marked relating to incident report number 166578511.

We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*, and includes the identity of the complainant and a detailed description of the offense. *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*). Accordingly, with the exception of basic information, the city may withhold the information pertaining to incident report number 165748011, which we have marked, under section 552.108(a)(1) and the information relating to incident report number 166578511, which we have marked, under section 552.108(a)(2).

We note the remaining law enforcement record contains information subject to section 552.130 of the Government Code.² Section 552.130 excepts from disclosure

²The 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).

information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. *See* Gov't Code § 552.130(a)(1). We find the city must withhold the driver's license numbers we have marked under section 552.130 of the Government Code.

In summary, with the exception of the marked law enforcement records, the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. The city must release the submitted crash reports pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of basic information, which must be released, the city may withhold the information we have marked related to incident report number 165748011 under section 552.108(a)(1) of the Government Code and the information we have marked related to incident report number 166578511 under section 552.108(a)(2) of the Government Code. The city must withhold the driver's license numbers we have marked under section 552.130 of the Government Code. The remaining law enforcement record, which we have marked, must be released.³

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

³We note the information being released contains social security numbers. 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. Gov't Code § 552.147(b).

Ref: ID# 453198

Enc. Submitted documents

c: Requestor
(w/o enclosures)