



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2012

Ms. Elizabeth L. White
Counsel for the City of Friendswood
Ross, Banks, May, Cron & Cavin, PC
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2012-09841

Dear Ms. White:

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# 457207 (Ref. No. W001449-040312).

The City of Friendswood (the "city"), which you represent, received a request for the requestor's personnel file. You state some information is being released. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, as you acknowledge, the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). You state the city has attempted to relate the request to information held by the city and have submitted information you state you believe is responsive to the request. Thus, we assume the city has made a good faith effort to relate the request to information held by the city, and we will address your arguments against its disclosure.

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 that other statutes make confidential, such as section 603.4 of title 20 of the Code of Federal Regulations. In Open Records Decision No. 599 (1992), this office determined that federal regulations prohibit the disclosure of “wage information” in the files of a state unemployment compensation agency, except for disclosure to an authorized requesting agency under certain circumstances. “Wage information” means “information in the records of a State [unemployment compensation] agency [and includes] the Federal employer identification number of the employer” reporting wages under a state unemployment compensation law. *See* 20 C.F.R. § 603.2(k); *see also* ORD 599 at 6.

You assert the marked employer tax identification numbers in Exhibit A are confidential under section 552.101 on the basis of these federal regulations. However, the confidentiality provision of section 603.4 applies to “States and State [unemployment compensation] agencies.” *See* 20 C.F.R. §§ 603.1, 603.2(f) and (g). You do not demonstrate how this provision is applicable to the city. Thus, no part of Exhibit A is made confidential by section 603.4 of title 20 of the Code of Federal Regulations, and it may not be withheld under section 552.101 on that basis.

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). 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state incident report number 1-97-000715 and its associated call report, number 972180055, and call report number 950100082, all labeled as Exhibit B, pertain to incidents that did not result in conviction or deferred adjudication.

However, 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes, among other things, a detailed description of the offenses. *See Houston Chronicle*, 531 S.W.2d at 186-88. We note you have marked for withholding the entire narrative portion of report number 1-97-000715 and the entirety of call report number 50100082. The remaining information in report number 1-97-000715 does not contain information sufficient to satisfy the requirement that a detailed description of the offenses be released, and you have not marked any basic information to be released from call

report number 50100082. Accordingly, the city must release sufficient portions of each report to encompass basic information as described by *Houston Chronicle*. See 531 S.W.2d at 186-88; see also ORD 127. The city may withhold the remaining information in each report under section 552.108(a)(2).

In summary, with the exception of basic information from each report, including a sufficient portion of the narrative to encompass a detailed description of the offenses, the city may withhold Exhibit B under section 552.108(a)(2) of the Government Code. Exhibit A and basic information from Exhibit B must be released to the requestor.¹

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

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¹We note the information to be released contains the requestor's social security number, to which he has a right of access under section 552.023 of the Government Code. See generally 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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). 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 an attorney general decision under the Act. See Gov't Code § 552.147(b). Therefore, if the city receives another request for this particular information from a different requestor without such a right of access, then the city is authorized to redact the social security number in the submitted information without requesting a ruling from this office.

Ref: ID# 457207

Enc. Submitted documents

c: Requestor
(w/o enclosures)
