



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2013

Mr. Norman Ray Giles
Counsel for the City of Pasadena
Chamberlain, Hrdlicka, White, Williams & Aughtry, P.P.C.
1200 Smith Street, Suite 1400
Houston, Texas 77002

OR2013-16805

Dear Mr. Giles:

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# 500679.

The Pasadena Police Department (the "department"), which you represent, received a request for: (1) the personnel file of a named police officer, including his employment application, date of hire, any personnel actions brought against him, and commendations, and his current status with the department, and (2) the date of arrest and the charge filed against a named individual, as well as the individual's full name, date of birth, and address. You state the department has provided the requestor with all of the information responsive to point two of the request and portions of the requested personnel file. We understand you to claim the submitted information is not responsive to the request. In the alternative, you claim the submitted information in the personnel file is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

Initially, we address your assertion that the information at issue consists of "non-public records . . . that may be erroneously construed as responsive to point 1 of the request." Point one of the request seeks the complete personnel file of the named police officer, including any personnel actions brought against him. The submitted documents consist of an Internal Affairs Department investigation related to an on-the-job incident involving the named

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.

officer. We note a governmental body must make a good-faith effort to relate a request for information to responsive information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Upon review, we conclude the information at issue is responsive to point one of the request. Thus, we will address the department's arguments against the disclosure of this information.

Next, we note the submitted information includes records obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). Thus, any information that is held by the department as an agent of the grand jury consists of records of the judiciary not subject to disclosure under the Act, and we do not address its public availability. To the extent the information at issue is not held by the department as an agent of the grand jury, we will address your argument against disclosure of the submitted information.

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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does 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.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. 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); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you provide a representation from an assistant district attorney with the Harris County District Attorney's Office (the "district attorney's office") stating the district attorney's office objects to release of the information at issue as it relates to a pending criminal prosecution. The district attorney's office further states release of the information at issue could interfere with this pending prosecution. Based upon these representations and our review, we conclude that release of the submitted 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). Thus, section 552.108(a)(1) is applicable to the information at issue.

We note that section 552.108 of the Government Code does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88 (court delineates law enforcement interests that are present in active cases); 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, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code.

We understand you to generally assert the basic information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, you have not directed our attention to, and we are not aware of, any law under which any of the basic information is considered to be confidential for the purposes of section 552.101. See Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, we conclude that the department may not withhold any of the basic information under section 552.101.

In summary, the information held by the department as an agent of the grand jury is not subject to disclosure under the Act. Except for basic information, the department may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code. The basic 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 500679

Enc. Submitted documents

c: Requestor
(w/o enclosures)