



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 15, 2013

Ms. Danielle Folsom  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2013-19992

Dear Ms. Folsom:

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# 505879 (GC No. 20786).

The City of Houston (the "city") received a request for all letters of indefinite suspension for all Houston Police Department (the "department") officers and the decisions for any cases that went to arbitration during a specified period of time.<sup>1</sup> You state the city will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-06586 (2013). In that ruling, we determined, in part, the city may withhold some of the requested information under section 552.103 of the Government Code. You inform us the law, facts, or circumstances on which the previous ruling was based have not changed. Accordingly, we conclude the city may rely on Open Records Letter No. 2013-06586 as a previous determination and withhold or release the identical information in accordance with that

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<sup>1</sup>We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances 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). However, we will consider your argument under section 552.103 for the submitted information, which was not the subject of Open Records Letter No. 2013-06586.

We note the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter 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 [of the Government Code];

...

(12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases[.]

Gov't Code § 552.022(a)(1), (12). The submitted information consists of a completed investigation and a final order of the city's Police Officers' Civil Service Commission. Although you assert the submitted 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 id.* § 552.007; *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 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 does not make information confidential for the purposes of section 552.022. Therefore, the city may not withhold the submitted information that is subject to section 552.022 under section 552.103 of the Government Code. We note a portion of the submitted information may be subject to section 552.117 of the Government Code.<sup>2</sup> Because this section makes information confidential under the Act, we will address the applicability of section 552.117 to the submitted information.

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<sup>2</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).

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We have marked information under section 552.117 that consists of the personal information of a peace officer who is or was employed by the department and the information is held in the employment context. In this instance, however, it is unclear whether the officer whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the officer at issue is currently a licensed peace officer as defined by article 2.12, then the city must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the officer at issue is no longer a licensed peace officer as defined by article 2.12, the city may not withhold the marked information under section 552.117(a)(2).

If the information we marked under section 552.117 pertains to a former department officer who is no longer a licensed peace officer, then the marked information is subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, if the officer at issue is no longer a peace officer as defined by article 2.12 and timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If the officer at issue is currently a licensed peace officer as defined by article 2.12 or did not timely request confidentiality under section 552.024, the city may not withhold the marked information under section 552.117(a)(1).

In summary, the city may continue to rely on Open Records Letter No. 2013-06586 as a previous determination and withhold or release the identical information in accordance with that ruling. The city must withhold the information we have marked under section 552.117(a)(2) of the Government Code, if the officer at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. If the officer at issue is not a licensed peace officer as defined by article 2.12 and timely requested confidentiality under section 552.024 of the Government Code, then the city must withhold

the marked information under section 552.117(a)(1) of the Government Code. The remaining 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](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,

A handwritten signature in black ink, appearing to read "N. A. Ybarra". The signature is fluid and cursive, with a large initial "N" and a stylized "Ybarra".

Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/ac

Ref: ID# 505879

Enc. Submitted documents

c: Requestor  
(w/o enclosures)