



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2014

Ms. Judi S. Rawls
Police Administration Legal Counsel
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2014-22940

Dear Ms. Rawls:

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# 547085.

The Beaumont Police Department (the "department") received two requests from two separate requestors. The first requestor seeks twenty-two categories of information related to a specified incident and specific individuals. The second requestor seeks the use of force report pertaining to the same specified incident. You state the department will provide some of the requested information to the requestors. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.119, 552.130, and 552.136 of the Government Code. You also state you have notified the Jefferson County District Attorney's Office and the Combined Law Enforcement Association of Texas of the requests and of their rights to submit arguments to this office as to why the requested information should not be released.¹ See Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information). We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by each requestor. See *id.*

Initially, you acknowledge some of the submitted information is not responsive to either of the instant requests. This ruling does not address the public availability of any information that is not responsive to the requests, and the department is not required to release such information in response to these requests.

¹As of the date of this letter, we have not received comments from either entity.
POST OFFICE BOX 12548, AUSTIN, TEXAS 78711-2548 TEL: (512) 463-2100 WWW.TEXASATTORNEYGENERAL.GOV
An Equal Employment Opportunity Employer • Printed on Recycled Paper

Next, the first requestor seeks all personal property that was confiscated as part of the department's investigation of the specified incident. The Act is applicable to "public information," which is defined as information written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body if the governmental body owns the information, has a right of access to the information, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. *See id.* § 552.002. This office has ruled tangible physical items are not "information," as that term is contemplated under the Act. *See* Open Records Decision No. 581 (1990). Thus, the personal property is not public information for purposes of section 552.002 of the Government Code and the Act does not require the department to make any such items available. *See* Gov't Code § 552.021.

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 responsive information submitted as Exhibits B and D pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to this information.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold Exhibits B and D under section 552.108(a)(2) of the Government Code.²

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 section encompasses information protected by other statutes, such as section 143.089 of the Local Government Code. You state the City of Beaumont is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files relating to a police officer: a police

²As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

officer's civil service file the civil service director is required to maintain, and an internal file the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). The officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in which the police department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(3).

In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a).³ *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or in possession of the police department because of its investigation into a police officer's misconduct, and the police department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to an officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). In addition, a document relating to disciplinary action against a police officer that has been placed in the officer's personnel file as provided by section 143.089(a)(2) must be removed from the officer's file if the civil service commission finds the disciplinary action was taken without just cause or the charge of misconduct was not supported by sufficient evidence. *See id.* § 143.089(c). Information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You assert portions of the IA Pro printouts, or use of force reports, submitted as Exhibit C are excepted under section 143.089(g). You state the information you have marked in these use of force reports is maintained exclusively in the department's internal files pursuant to section 143.089(g). Furthermore, you state, and the submitted documents reflect, the information you have marked relates to incidents wherein no disciplinary action was taken against any officers. As you acknowledge, use of force reports were the subject of prior

³Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. Local Gov't Code §§ 143.051-.055.

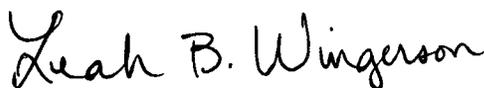
litigation between the City of Beaumont and this office. *See City of Beaumont v. Abbott, Attorney Gen. of Tex.*, No. D-1-GV-07-002630 (345th Dist. Ct., Travis County, Tex., Oct. 26, 2010). As part of the subsequent settlement agreement, the parties agreed the IA Pro printouts were not confidential under section 143.089(g) in their entirety. Instead, the parties agreed that only portions of the printouts were confidential under this section. *See id.* (IA Pro printouts, as redacted by this office, subject to disclosure). Upon review, we agree the information you have marked is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

In summary, with the exception of basic information, the department may withhold Exhibits B and D under section 552.108(a)(2) of the Government Code. The department must withhold the information you have marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The department must release the remaining information.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 547085

Enc. Submitted documents

c: Requestors
(w/o enclosures)