



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 6, 2017

Ms. Kristie L. Lewis  
HPD Staff Attorney  
Houston Police Department  
1200 Travis  
Houston, Texas 77002-6000

OR2017-02609

Dear Ms. Lewis:

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# 644443 (ORU Nos. 16-8956 & 16-9559).

The Houston Police Department (the "department") received two requests from different requestors for certain information pertaining to a specified accident involving a named officer and certain training documents and video recordings. You state the department will release some information. You claim 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 information.

Initially, we note the second requestor does not seek the training documents and video recordings. Thus, this information is not responsive to the second request and the department is not required to release that information in response to the second request.

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 section 143.1214 of the Local Government Code, which provides:

- (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 state the information at issue pertains to an open investigation by the department's Internal Affairs Division of alleged misconduct by a police officer. You also state the requestors are not employees of another law enforcement agency, fire department, or the office of a district or United States attorney. *See id.* § 143.1214(b). Thus, based on your representations and our review, we conclude the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. However, we find the remaining information at issue consists of an incident report and an accident report, which are maintained independently from the police officer's internal file. In this instance, the requestors have specifically requested this information, which is maintained for law enforcement purposes separate and apart from any internal files. The department may not engraft the confidentiality afforded to records under section 143.1214 to records that exist independently of the internal files. Accordingly, the remaining information at issue is not confidential under section 143.1214 of the Local Government Code and the department may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. *See* Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. Transp. Code §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

The remaining information contains CR-3 accident reports. In this instance, the second requestor is a person listed under section 550.065(c). Thus, the second requestor has a right of access to the submitted accident reports under section 550.065(c) of the Transportation Code. However, the first requestor is not a person listed under section 550.065(c). Consequently, the submitted accident reports are confidential under section 550.065(b) of the Transportation Code, and the department must withhold them from the first requestor under section 552.101 of the Government Code on that basis. Section 550.065(c-1) requires the department to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the first requestor has a right of access to the redacted accident reports under section 550.065(c-1). Accordingly, the department must release the submitted accident reports to the second requestor pursuant to section 550.065(c) of the Transportation Code, and must release the redacted accident reports to the first requestor pursuant to section 550.065(c-1) of the Transportation Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded section 552.108(b) excepts from public disclosure information relating to the

security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The information at issue consists of the department's general orders and lesson plans regarding driving and patrol training. You explain that if the information at issue is released, it "would give suspects a tactical advantage and allow them to . . . carry out criminal activity as well as avoid or hinder investigation and apprehension." Based on your arguments and our review of the information at issue, we agree that release of the information we have marked would interfere with law enforcement. Accordingly, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate the remaining information at issue would interfere with law enforcement or crime prevention. Therefore, the department may not withhold the remaining information at issue under section 552.108(b)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>1</sup> *See* Gov't Code § 552.130. Thus, the department must generally withhold the motor vehicle record information we have marked, as well as any discernible license plates, vehicle registration stickers, or vehicle identification numbers in the submitted photographs, under section 552.130 of the Government Code. However, we note section 552.130 protects personal privacy. In this instance, the second requestor represents one of the individuals whose motor vehicle record information may be at issue. Thus, the second requestor has a right of access under section 552.023 to information pertaining to his client that would otherwise be protected under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, to the extent the motor vehicle record information we have marked, or the discernible motor vehicle

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<sup>1</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).

information in the submitted photographs, pertains to the requestor's client, such information may not be withheld from the second requestor under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. The department must release the submitted accident reports to the second requestor pursuant to section 550.065(c) of the Transportation Code. With respect to the first requestor, the submitted accident reports are confidential under section 550.065(b) of the Transportation Code and must be withheld under section 552.101 of the Government Code, but the department must release the redacted accident reports to the first requestor pursuant to section 550.065(c-1) of the Transportation Code. The department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The department must generally withhold the motor vehicle record information we have marked, as well as any discernible license plates, vehicle registration stickers, or vehicle identification numbers in the submitted photographs under section 552.130 of the Government Code. However, the department may not withhold from the second requestor any motor vehicle record information we have marked, or the discernible motor vehicle information in the submitted photographs, pertaining to the second requestor's client under section 552.130 of the Government Code. The department must release remaining responsive 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](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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/sb

Ref: ID# 644443

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)