



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2022

Mr. Joe Zapata
Administrative Supervisor
Houston Police Department
1200 Travis, 10th Floor
Houston, Texas 77002-6000

OR2022-07323

Dear Mr. Zapata:

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# 936399 (Ref. No. P023020-122821).

The City of Houston (the "city") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. The city is a civil service city under chapter 143 of the Local Government Code. Section 143.1214 of the Local Government Code provides in relevant part:

(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 disciplinary action against a fire fighter or police officer to the 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) 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 submitted as Exhibit 2 is maintained in the city's police department's internal investigative files and relates to an ongoing investigation by the city's police department of alleged misconduct by department officers. You also state the requestor is not a representative from another law enforcement agency, a fire department, or the office of a district or United States attorney. *See id.* § 143.1214(b)(1)-(2). Based on your representations and our review of the information at issue, we agree Exhibit 2 is confidential pursuant to section 143.1214 of the Local Government Code. Accordingly, the city must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code.

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(a)(1) must 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). You state Exhibits 3, 4, and 5 pertain to a pending criminal investigation. Based upon this representation, we conclude the release of the information at issue 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 Exhibits 3, 4, and 5.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88); *see also* 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, which must be released, the city may withhold Exhibits 3, 4, and 5 under section 552.108(a)(1) of the Government Code.¹

In summary, the city must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. With the exception of basic information, which must be released, the city may withhold Exhibits 3, 4, and 5 under section 552.108(a)(1) of the Government Code.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Sarah E. Reese
Attorney
Open Records Division

SER/jm

Ref: ID# 936399

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As our ruling is dispositive, we do not address the other argument of the city to withhold the submitted information, except to note basic information may not be withheld from public disclosure under section 552.103. See Open Records Decision No. 597 at 2-3 (1991).