



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 18, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston Legal Department
P. O. Box 1562
Houston, Texas 77251-1562

OR98-2755

Dear Ms. Grace:

You ask this office to reconsider our decision in Open Records Letter No. 98-1881 (1998). Your request for reconsideration was assigned ID#119414.

Open Records Letter No. 98-1881, which involved a request for the "name and Employee number of [the] officer assigned to 'take home' patrol care with license tag # 650-836," determined that the City of Houston (the "city") must release the requested information. The city had argued that the requested information was confidential pursuant to section 143.089(g) of the Local Government Code. Section 143.089(g) makes confidential information maintained in police department personnel files. This office ruled, however, that, as the responsive records exist independently of the confidential police department personnel file, the city must release the requested information.

You now assert that the city is prohibited from releasing the requested information by section 552.101 of the Government Code in conjunction with sections 143.089 and 143.1214 of the Local Government Code. You argue that to publicly release the identity of the officer who was driving that particular car would reveal the identity of the officer who was the subject of an unsustained internal affairs division investigation in contravention of section 143.089 and *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied).

Files of internal affairs investigations that result in disciplinary action are not excepted from disclosure based on section 552.101. However, when the records concern a complaint against a police officer for which no disciplinary action was taken, the records are confidential under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. See *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied).

Section 143.089(b) states that “[a] letter, memorandum, or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person’s personnel file if the employing department determines that there is insufficient evidence to sustain the charge of misconduct.” The court in *City of San Antonio v. Texas Attorney General*, in construing section 143.089, found that the provision reflects the legislative policy that allegations of misconduct made against a police officer shall not be subject to compelled disclosure under the Open Records Act unless they have been substantiated and resulted in disciplinary action. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d at 949. Section 143.1214(b) of the Local Government Code, which requires “the department” to maintain certain records and prohibits the public release of those records thus maintained, reflects a similar legislative intent to protect from disclosure records of unsustained charges against police officers and fire fighters. Section 143.1214(b) provides in relevant part as follows:

The department shall maintain . . . any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer that the department did not sustain, only in a file created by the department for the department’s use. The department may not release those documents to any agency or other person except another law enforcement agency or fire department.

You do not argue that the information is not maintained independently of a section 143.189(g) file or a section 143.1214(b) file. Rather, your position seems to be that, because these provisions evidence a legislative intent to protect police officers from public release of information about unsustained complaints, the scope of confidentiality should reach any information that could serve to identify an officer who was the subject of an unsustained complaint.

Statutory confidentiality under section 552.101 of the Government Code requires express language making particular information confidential. Open Records Decision No. 478 (1987). The language of a confidentiality statute controls the scope of the protection. *See id.* at 2. Furthermore, for information to be excepted from disclosure under section 552.101, a statute explicitly must require confidentiality; a confidentiality requirement will not be implied from the statutory structure. Open Records Decision No. 465 (1987).

We do not believe that either section 143.089 or section 143.1214 explicitly reaches information that is maintained outside of the files kept pursuant to those statutes. We cannot imply that they do so. *See id.* We therefore affirm Open Records Letter No. 98-1881 (1998).

You assert that Open Records Letter No. 98-1881 is not consistent with Open Records Letter No. 98-1182 (1998). Open Records Letter No. 98-1881 is distinguishable from Open Records Letter No. 98-1182. In Open Records Letter No. 98-1182, which involved a request for, among other things, the identity of all jailers and police officers involved in the requestor’s arrest, the city represented to this office that the requested

information was part of an internal affairs investigation in which the allegation had not been sustained. Here, the city does not dispute that the city maintains the requested information independently of the investigation file. You now state, however, in regard to Open Records Letter No. 98-1182, that the requested information about certain jailers and a certain police officer is contained in department records "separate and apart from those of the internal affairs investigation." Thus, Open Records Letter No. 98-1182 is overruled to the extent that it concludes that requested information about the jailers and police officer that the city maintains independently of the investigative file is confidential pursuant to section 143.1214(b) of the Local Government Code. The city had also asserted that the requested information is excepted from public disclosure based on section 552.108 of the Government Code. However, section 552.108 is inapplicable where a complaint against a law enforcement officer does not result in a criminal investigation or prosecution. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.-El Paso 1992, writ denied).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Deputy Chief
Open Records Division

KHH/mjc

Ref.: ID# 119414

Enclosures: Submitted documents

cc: Mr. Stephen Dean
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(w/o enclosures)