



April 19, 1999

Ms. Tracy B. Calabrese  
Senior Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR99-1047

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124470.

The City of Houston (the "city") received a request for a 911 tape pertaining to a specific internal affairs investigation. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted 911 tape.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You assert that the 911 tape is contained in the IAD investigative file and is confidential under section 143.089 of the Local Government Code.

Section 143.089 of the Local Government Code provides for the maintenance of a police civil service file and what may be kept in that file:

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) 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 substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Information that subsections 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in a police department's internal file, as provided in section 143.089(g):

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

You represent that the 911 tape at issue is maintained by the Houston Police Department under section 143.089(g) of the Local Government Code. You also inform us that "[t]his case involves an ongoing internal investigation by the [department] of the conduct of one of

its officers.” Because the department has not sustained the charge of misconduct, we conclude that the requested information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld from disclosure under section 552.101 of the Government Code.

Because we are able to make a determination under section 552.101, we need not address your other claimed exception pursuant to section 552.108 of the Government Code. We are resolving this matter with an 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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

*David Van Brunt Price*  
David Van Brunt Price  
Assistant Attorney General  
Open Records Division

DVP\nc

Ref: ID# 124470

Encl: Submitted documents

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