



August 20, 2002

Ms. Jan Clark
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2002-4628

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167370.

The City of Houston (the "city") received a request for all information and case numbers relating to the requestor. You state that you will release some information to the requestor but claim that the remainder of the requested 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.

You assert that the information submitted in Exhibits 2, 3, 4, and 6 is confidential by law. Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. You inform us that Houston is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that a city's civil service director is required to maintain, and an internal file that a police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police officer is subject to disciplinary action under chapter 143, section 143.089(a)(2) requires that records relating to the investigation and disciplinary action be placed in the officer's civil service file maintained under section 143.089(a). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See id.* §§ 143.051-.055. Records maintained as part of an officer's civil service file are subject to release under chapter 552 of the Government Code. *See City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 948-49 (Tex.

App.–Austin 1993, writ denied).; *see also* 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). 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. *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 at 949.

You state that Exhibits 2, 3, 4, and 6 have not “resulted in any discipline of any police officer” and assert that the “IAD investigations at issue may be held only by the police department in a departmental file and may not become a part of an officer's personnel file. Thus, the City is expressly prohibited by law from placing these investigations in personnel files or from releasing them.” Exhibit 6 alleges wrongdoing on the part of certain named officers. Based on your representation that these allegations did not result in any discipline against these officers as well as our review of this exhibit, we agree that the information in Exhibit 6 is properly maintained in the internal departmental files of the named officers. Therefore, we find that Exhibit 6 is confidential pursuant to section 143.089(g) and must be withheld under section 552.101 of the Government Code.

We note, however, that Exhibits 2, 3, and 4 do not accuse any particularly identifiable officer of any wrongdoing or misconduct. The plain language of section 143.089(g) affords confidentiality to the departmental personnel file of *a* police officer or fire fighter. It says nothing about vague allegations against unidentifiable officers or general complaints against police departments. Accordingly, we do not believe section 143.089(g) applies to Exhibits 2, 3, or 4. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).

We note that our conclusion on this issue is in keeping with the spirit, as well as the letter, of section 143.089. As articulated by the court in *City of San Antonio v. Texas Attorney General*, the provisions of section 143.089 governing the content of the civil service file reflect “a legislative policy against disclosure of unsubstantiated claims of misconduct made against police officers and fire fighters, except with an individual's written consent.” Because Exhibits 2, 3, and 4 do not allege wrongdoing or misconduct on the part of any particularly identifiable officer or officers, we cannot see how releasing these exhibits would harm the reputation of any officer.

You also assert that Exhibits 2, 3, and 4, along with Exhibits 4-A and 5, are excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime; (2) 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; (3) it is information relating to a threat against a peace officer collected or disseminated under Section 411.048; or (4) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). However, section 552.108 is inapplicable to a police department's internal administrative investigations that do not involve the investigation or prosecution of crime. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied).

You inform us that Exhibits 4 and 4-A relate to a pending criminal investigation. Under these circumstances, we believe that release of these exhibits 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). You also inform us, and the documents reflect, that Exhibits 2 and 5 constitute criminal investigations that did not result in conviction or deferred adjudication. These exhibits are therefore subject to section 552.108(a)(2).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108 authorizes you to withhold the remaining

information from Exhibits 2, 4, 4-A, and 5, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

As for Exhibit 3, you inform us that it is an internal affairs investigation “into allegations of criminal misconduct by Houston Police officers.” You claim this investigation was “treated as [a] criminal investigation[.]” and should be excepted under section 552.108(a)(2) because it did not result in conviction or deferred adjudication. Exhibit 3 does not support your position. Instead, the documents indicate that the investigation at issue was purely administrative in nature and that no criminal investigation was conducted. Accordingly, we find that it is not subject to section 552.108 and may not be withheld under that exception. *See Morales*, 840 S.W.2d at 526 (law enforcement exception is inapplicable to police department’s internal administrative investigations that do not involve investigation or prosecution of crime); *see also* Gov’t Code § 552.301(e)(1)(a); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977) (governmental body claiming law enforcement exception must reasonably explain, if information does not supply explanation on its face, how and why release of requested information would interfere with law enforcement).

In summary, the city must withhold Exhibit 6 under section 552.101 as information that is confidential by law. Exhibits 2, 4, 4-A, and 5 may be withheld under section 552.108, except for basic information, which must be released. Because none of the city’s claimed exceptions apply to it, Exhibit 3 must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one

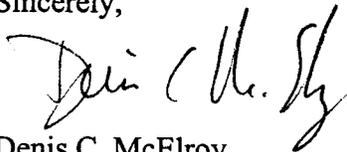
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 167370

Enc. Submitted documents

c: Ms. Diana L. Ponaratt
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(w/o enclosures)