



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 4, 2006

Mr. Rashaad V. Gambrell  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2006-14179

Dear Mr. Gambrell:

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# 265964.

The Houston Police Department (the "department") received a request for the personnel file of a named employee.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.101, 552.1175, and 552.130 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." This section encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 143.1214 of the Local Government Code.<sup>2</sup> Section 143.1214 provides in part:

---

<sup>1</sup>We note that the requestor represents the named employee.

<sup>2</sup>We understand that the City of Houston is a civil service city under chapter 143 of the Local Government Code.

(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 that the information at issue is contained in Internal Affairs Division investigatory files of the department. You inform us that Exhibit 3 relates to an investigation that resulted in disciplinary action under chapter 143 of the Local Government Code.<sup>3</sup> You state that the department has forwarded documents relating to the investigation that meet the conditions of section 143.1214(c) to the officer's personnel file maintained under section 143.089(a) of the Local Government Code.<sup>4</sup> However, you state that Exhibit 3 does not meet all of the conditions of section 143.1214(c). You further inform us that Exhibit 2 relates to an investigation in which no disciplinary action was taken. Therefore, you state that Exhibit 2 does not meet all of the conditions of section 143.1214(c). You assert that Exhibits 2 and 3 are confidential under section 143.1214. Based on your representations and our review of the information in question, we agree that the department

---

<sup>3</sup>Chapter 143 of the Local Government Code prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov't Code §§ 143.051-.055.

<sup>4</sup>Section 143.089(a) of the Local Government Code provides for the existence of a civil service file that must contain certain types of information relating to a police officer. See Local Gov't Code § 143.089(a).

must withhold Exhibits 2 and 3 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code as information made confidential by law.<sup>5</sup> As our ruling on this issue is dispositive, we need not address your remaining arguments.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General at (512) 475-2497.

---

<sup>5</sup>You note that the department will direct the requestor to the city's Human Resources Department for further responsive information contained within the civil service file.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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,

A handwritten signature in black ink, appearing to read 'José Vela III', written in a cursive style.

José Vela III  
Assistant Attorney General  
Open Records Division

JV/eb

Ref: ID# 265964

Enc. Submitted documents

c: Renuka V. Jain  
Renuka V. Jain & Associates, P.C.  
3303 Mercer, Suite 200  
Houston, Texas 77027  
(w/o enclosures)