



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 6, 2006

Mr. Rashaad V. Gambrell  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2006-14346

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# 266192.

The Houston Police Department (the "department") received a request for personnel information related to four named police officers. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.1175, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note, and you acknowledge, that the department did not submit a portion of the requested information for our review within the fifteen-business-day deadline mandated by section 552.301(e) of the Government Code. *See* Gov't Code § 552.301(e). When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); *Open*

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. You raise section 552.101 of the Government Code for this information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your arguments under this exception for the information at issue.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code.<sup>2</sup> Section 143.089(g) provides:

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.

*Id.* § 143.089(g); *see also* *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied) (concluding that legislature intended to deem confidential information maintained by police department for its own use under Local Gov't Code § 143.089(g)); *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet. h.) (restricting confidentiality under section 143.089(g) to information reasonably related to police officer's or fire fighter's employment relationship).

You represent that Exhibits 2 and 3, enclosed with your correspondence dated October 12, 2006, are maintained in the department's internal personnel files pursuant to section 143.089(g). Therefore, we find that these two Exhibits are confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses section 143.1214 of the Local Government Code. Section 143.1214 provides in 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

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

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 explain that Exhibits 2-9, attached with your correspondence dated October 23, 2006, consist of investigations by the department of alleged misconduct by the police officers at issue. You assert that Exhibits 2, 5, 7 and 8 contain investigations involving allegations of misconduct that were sustained and disciplinary action was taken. However, you inform us that the information pertaining to these incidents do not meet the conditions specified by section 143.1214(c) for inclusion in the officers' civil service personnel files. You further state that you have "forwarded the documents from Exhibit 2, 5, 7, and 8 meeting the requirements of § 143.1214(c) to the appropriate officer's personnel file maintained under 143.089(a)."

You also assert that Exhibits 3, 4, 6, and 9 consist of investigations in which the allegations were not sustained and no disciplinary action was taken. Thus, you indicate that this information is maintained by the department in departmental files and that it is not part of the police officers' civil service personnel files. *See id.* § 143.1214(c); *see also id.* § 143.089(g). Based on your representations and our review of the information at issue, we agree that the information in Exhibits 3, 4, 6, and 9 is confidential under section 143.1214 of the Local Government Code, and the department must withhold it under section 552.101 of the Government Code. *See Open Records Decision No. 642 (1996).*

In summary, Exhibits 2 and 3 of your letter dated October 6, 2006, must be withheld under section 552.101 in conjunction with section 143.089 of the Local Government Code. Exhibits 2-9 of your letter dated October 23, 2006, must be withheld under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. As our ruling 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.

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 'G. Saenz', with a large, stylized flourish at the end.

Gilbert N. Saenz  
Assistant Attorney General  
Open Records Division

GNS/sdk

Ref: ID# 266192

Enc. Submitted documents

c: Mr. Steve O. Gonzalez  
1550 East Highway 6  
Alvin, Texas 77511  
(w/o enclosures)