



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2006

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2006-10735

Dear Ms. Chang:

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# 259753.

The Houston Police Department (the "department") received a request for information pertaining to a specified police officer. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

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. Section 143.1214 of the Local Government Code provides in part:

¹To the extent any additional types of responsive information existed on the date the department received this request, we assume the department has released them. If the department has not released any such records, it must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

(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).² You state that the submitted information is maintained in the Internal Affairs Division ("IAD") investigatory files of the department. You inform us that the submitted information relates to IAD investigations in which some of the allegations were not sustained and no disciplinary action was taken. You state that the remaining allegations did result in disciplinary action under chapter 143 of the Local Government Code. You also state that the department has forwarded documents relating to these remaining allegations that meet the conditions of section 143.1214(c) to the named officer's personnel files maintained under section 143.089(a) of the Local Government Code.³ Finally, you state that the submitted information does not meet all of the conditions

²We understand that the City of Houston is a civil service municipality under chapter 143 of the Local Government Code.

³Section 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).

of section 143.1214(c). Based on your representations and our review, we conclude that the submitted information is subject to section 143.1214 of the Local Government Code and must be withheld under section 552.101 of the Government Code.

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 'JAP', written over a horizontal line.

James A. Pefson III
Assistant Attorney General
Open Records Division

JAP/dh

Ref: ID# 259753

Enc. Submitted documents

c: Tyler A. Flood
Tyler Flood & Associates
405 Main, #820
Houston, Texas 77002
(w/o enclosures)