



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 28, 2010

Ms. Candice M. De La Garza  
Assistant City Attorney  
City of Houston Legal Department  
P.O. Box 368  
Houston, Texas 77251-1562

OR2010-16384

Dear Ms. De La Garza:

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# 398292.

The Houston Police Department (the "department") received a request for twelve categories of information pertaining to traffic enforcement and radar units and training. You claim that the submitted 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, a portion of which is a representative sample.<sup>1</sup>

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 other statutes make confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code for the personnel records submitted as Exhibit 3. The City of Houston is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the

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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.

existence of two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. See Local Gov't Code § 143.089(a), (g). The officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). See *Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or are in the possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. See Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information 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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the personnel records in Exhibit 3 are maintained in the department's internal files as authorized under section 143.089(g) of the Local Government Code. Based on this representation and our review of the submitted records, we agree the personnel records in Exhibit 3 are confidential pursuant to section 143.089(g).<sup>2</sup> Accordingly, the department must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); see also Open Records Decision No. 531 at 2 (1989) (quoting *Pruitt*, 551 S.W.2d 706). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.”

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<sup>2</sup>We note that section 143.089(g) of the Local Government Code requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

*See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

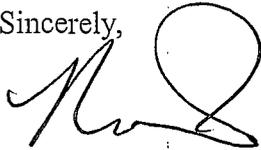
You assert the documents contained in Exhibits 1 and 2 are excepted under section 552.108(b)(1). You state these documents contain “detailed information regarding tactics and procedures regarding the use of speed detection instruments to detect, investigate, and deter violations of established laws regarding vehicle speed on public roads and highways.” You have provided an affidavit from a department senior police officer who explains how disclosure of Exhibits 1 and 2 would impair law enforcement investigations by allowing suspects to anticipate where such instruments may be deployed or take steps to hinder the effectiveness of the instruments. Based on these arguments and our review, we agree portions of Exhibits 1 and 2, which we have marked, are protected by section 552.108(b)(1) and may be withheld on that basis. However, the remaining information in Exhibits 1 and 2 consists of general information, historical and factual information, reporting procedures, documentation procedures, and other routine administrative policies and procedures of the department. Thus, we find you have failed to establish how public access to the remaining information in Exhibits 1 and 2 would interfere with law enforcement. Accordingly, the department may not withhold the remaining information in Exhibits 1 and 2 under section 552.108(b)(1) of the Government Code.

In summary, the department must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The department may withhold the information we have marked in Exhibits 1 and 2 under section 552.108(b)(1) of the Government Code. The remaining information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', with a large, stylized loop at the end.

Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 398292

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)