



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2014

Ms. Evelyn Kimeu
Staff Attorney
Legal Department
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2014-00517

Dear Ms. Kimeu:

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# 510489 (ORU 13-6272).

The Houston Police Department (the "department") received a request for all information pertaining to a specified incident and policies or general orders regarding accidents involving city vehicles and police officers involved in motor vehicle accidents. You state you have released some of the requested information. You claim the submitted 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.

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 claim section 552.101 in conjunction with section 143.1214 of the Local Government Code, which 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 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 the information in Exhibits 2 and 3 is related to an internal affairs investigation regarding an officer's alleged misconduct that resulted in disciplinary action. You state the department has forwarded the documents meeting the conditions of section 143.1214(c) to the police officer's personnel file maintained under section 143.089(a) of the Local Government Code.¹ You also state that the information is maintained in the department's investigatory files and that the requestor is not another law enforcement agency or fire department or the office of a district or United States attorney. Thus, based on your representations and our review, we conclude Exhibit 2 must be withheld under section 552.101 in conjunction with section 143.1214.

However, Exhibit 3 consists of photographs that appear also to be maintained independently from the officer's personnel file. The present request does not specifically seek information from an officer's personnel file maintained by the department. In this instance, the requestor has specifically requested all information pertaining to a specified incident. Because the requestor seeks records pertaining to a specified incident, both information in the officer's personnel file and any copies of investigatory materials the department maintains for law

¹You indicate the department will direct the requestor to the City of Houston's Human Resources Department for further responsive information.

enforcement purposes are responsive. The department may not engraft the confidentiality afforded to records under section 143.1214 to records that exist independently of the internal files. Thus, if the department does not maintain the photographs for law enforcement purposes separate and apart from its internal files, the photographs are confidential under section 143.1214 and the department must withhold them under section 552.101 of the Government Code on that basis. However, if the submitted photographs are also maintained independently of the department's internal investigative file, they are not confidential under section 143.1214 and may not be withheld under section 552.101 of the Government Code on that basis.

If Exhibit 3 is not confidential under section 143.1214, we note the photographs contain information that is subject to sections 552.130 and 552.139 of the Government Code.² Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130. We conclude the department must withhold the portions of the submitted photographs that depict discernible license plate numbers, vehicle identification numbers, and the copy of the driver's license under section 552.130 of the Government Code.

Section 552.139(b)(3) of the Government Code provides, "a photocopy or other copy of an identification badge issued to an official or employee of a governmental body" is confidential. Id. § 552.139(b)(3). Therefore, the department must withhold this information, which we have marked, under section 552.139(b)(3) of the Government Code.

In summary, the department must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. If the department does not maintain the photographs for law enforcement purposes separate and apart from its internal files, Exhibit 3 is also confidential under section 143.1214 and the department must withhold it under section 552.101 of the Government Code on that basis. Otherwise, the department must withhold the portions of the submitted photographs that depict discernible license plate numbers, vehicle identification numbers, and the copy of the driver's license under section 552.130 of the Government Code and the information we marked under section 552.139(b)(3) of the Government Code. In that case, the remaining information in Exhibit 3 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.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Paigelay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 510489

Enc. Submitted documents

cc: Requestor
(w/o enclosures)