



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 2, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-2557

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 119042.

The City of Houston Police Department (the "department") received a request for "the Internal Affairs report," concerning a shooting incident involving the requestor's client, referenced by complaint number 98-0733. In response to the request, you submit to this office for review a copy of the information which you assert is responsive. You assert that the submitted information is protected from disclosure under section 552.101 of the Government Code, in conjunction with section 143.089(g) of the Local Government Code. We have considered the claimed exception and have reviewed the information submitted.

Based on the department's brief to this office and the requestor's letter, it appears that the department did not seek an open records decision from this office within the statutory ten *business* day deadline. *See* Gov't Code § 552.301. The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 provides such a compelling reason.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Chapter 143 of the Local Government Code sets forth civil service rules for municipal fire and police departments. Subchapter G of that chapter sets forth provisions applicable to municipalities with a population of 1.5 million or more, including the City of Houston. *See* Open Records Decision No. 642 (1990).¹

You assert that the internal affairs investigation is “pending at this time,” and is therefore, excepted from disclosure under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters’ and police officers’ civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Local Gov’t Code § 143.089(a), (g). Section 143.089 contemplates two different types of personnel files, a police officer’s civil service file that the police department is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov’t Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the officer’s civil service file maintained under section 143.089(a). Such records are subject to release under chapter 552 of the 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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).²

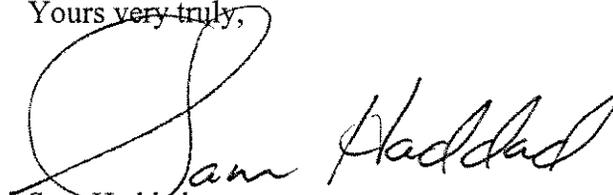
A review of the submitted information indicates that the records at issue pertain to an “active and ongoing” investigation of a complaint. Accordingly, the investigation has not resulted in disciplinary action as contemplated by chapter 143 of the Local Government Code. Therefore, because the investigation has not been completed and the allegations at issue have not been sustained at this point, the department must withhold the requested information from disclosure under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

¹Section 143.1214(b) of the Local Government Code requires “the department” to withhold from disclosure “an investigatory document that relates to a disciplinary action against a . . . police officer that was overturned on appeal” and “any document in the possession of the department that relates to a charge of misconduct against a . . . police officer that the department did not sustain.”

²We note that section 143.089(g) requires a police department who 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.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

Ref: ID# 119042

Enclosures: Submitted information

cc: Ms. Barbara J. Hudson
4615 SW Freeway, Suite 820
Houston, Texas 77027
(w/o enclosures)