



August 11, 2000

Ms. Lamis A. Safa
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston Texas 77251-1562

OR2000-3061

Dear Ms. Safa:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137960.

The City of Houston (the "city") received a request for information relating to any and all investigations regarding the requestor. You claim that the requested 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.

We first address your section 552.101 claim. You contend that the submitted information is confidential under section 552.101 of the Government Code in conjunction with sections 143.089(g) and 143.1214 of the Local Government Code.¹ Chapter 143 of the Local Government Code encompasses civil service rules for municipal fire and police departments. Subchapter G of chapter 143 is applicable to a municipality with a population of 1.5 million or more, including the City of Houston. Subchapter G includes section 143.1214 of the Local Government Code, which provides in relevant part:

¹Section 552.101 excepts from disclosure information that is considered to be confidential by law, including a statute. As a general rule, statutory confidentiality under section 552.101 requires express language making certain information confidential or stating that information shall not be released to the public. See Open Records Decision No. 478 at 2 (1987).

(b) The [police] department shall maintain an investigatory document that relates to a disciplinary action against a . . . 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 . . . police officer that the department did not sustain, only in a file created by the department for the department's use. The department may not release those documents to any agency or other person except another law enforcement agency[.]

Local Gov't Code § 143.1214(b).

Section 143.089 of the Local Government Code sets out rules governing the content and release of two types of personnel files maintained by municipal fire and police departments. The first category is mandatory. "The director or the director's designee shall maintain a personnel file on each fire fighter and police officer." Local Gov't Code § 143.089(a). This mandatory file must contain "any letter, memorandum, or document relating to: . . . (2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter" Local Gov't Code § 143.089(a)(2). Release of information contained in this mandatory file is governed by subsections 143.089(e) and (f) which state:

(e) The fire fighter or police officer is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file. . .

(f) The director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless release of the information is required by law.

Because information contained in this type of file may be released on the basis of other law or the person's consent, this information is not confidential and is, therefore, subject to the Act. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

The second type of file described in section 143.089 is discretionary. "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" Local Gov't Code § 143.089(g). The information contained in a section 143.089(g) file is confidential. "[T]he 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." *Id*; *see also City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

You explain that the submitted information contains records of an internal investigation located in the Houston Police Department Internal Affairs Unit of the Office of Inspector General. You state that the information reflects unsustained allegations against police officers and that it is kept solely in the Houston Police Department's investigative file for the department's own use. While we generally agree that the department's records of internal affairs investigations that do not result in disciplinary action are confidential under sections 143.089(g) and 143.1214, the information at issue here is contained in department offense reports separate and apart from those of the internal affairs investigation. The city may not engraft the confidentiality provisions of sections 143.089(g) and 143.1214 to other records that exist independently of the internal affairs investigation. Therefore, you may not withhold the information pursuant to sections 143.089(g) and 143.1214.

You argue that the submitted information is excepted from public disclosure pursuant to subsection 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" You indicate that the offense reports at issue relate to cases which "did not result in conviction or deferred adjudication." Based on your representation and our review of the reports, we conclude that, with the exception of basic information which must be released as explained below, you may withhold the information pursuant to section 552.108(a)(2).

Section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the requested report. Thus, with the exception of the basic front page offense information which must be disclosed, you may withhold the submitted information based on subsection 552.108(a)(2). Although section 552.108(a) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, except for basic information which must be released, the submitted information may be withheld pursuant to Government Code section 552.108(a)(2).

This letter ruling is limited to the particular records at issue in this request and 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 137960

Encl. Submitted documents

cc: Ms. Diana Panaratt
2305 Hayes #9716
Houston, Texas 77077
(w/o enclosures)