OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

September 14, 2000

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

OR2000-3553

Dear Ms. Safa:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139015.

The City of Houston (the "city") received a request for a copy of the complete investigative report regarding an individual shot and killed by a city police officer. You state that you will provide the requestor the "public release information page of the offense report." However, you claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 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 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:

> (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

[1]Section 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).

> 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).

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 a police officer and that it is kept solely in the Houston Police Department's investigative file for the department's own use. We agree that the department's records of internal affairs investigations that do not result in disciplinary action are confidential under section 143.1214, and that the information at issue here consists of those types of records; therefore, the city must withhold the submitted internal affairs division file, video, and tape pursuant to section 552.101 of the Government Code, in conjunction with section 143.1214 of the Local Government Code.

Because we find section 552.101 of the Government Code, in conjunction with section 143.1214 of the Local Government Code, to be dispositive, we do not address your other raised exceptions. 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, 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).

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 the General Services Commission 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,

Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 139015

Encl. Submitted documents, tapes

cc: Mr. Jimmy V. Delgado
The Delgado Law Firm
1225 North Loop West, Suite 810
Houston, Texas 77008
(w/o enclosures)