



August 10, 2001

Ms. Tracy B. Calabrese
Senior Assistant City Attorney
City of Houston Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-3503

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150536.

The City of Houston (the "city") received three requests for information relating to a fatal automobile accident involving a Houston police officer. The first two requests, which are separately addressed to the police and fire departments, are for dispatch tapes relating to the accident. The third requestor asks, among other things, for "any and all information in the investigation" of the accident. 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 raise and have reviewed the information you submitted.¹

We initially note that the third request also asks a series of questions. Chapter 552 of the Government Code does not require a governmental body to answer factual questions, perform legal research, or create new information in responding to a request for information; the governmental body must make a good faith effort, however, to relate a request to information that it holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). We therefore assume that the city has made the required good faith effort to relate this request to responsive information.

¹This letter ruling assumes that the submitted representative samples of information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the city to withhold any responsive information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

You claim that all of the submitted information is confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception protects information that is made confidential by another statute, such as section 143.1214 of the Local Government Code. Section 143.1214 provides in relevant part:

The department shall maintain . . . any document in the possession of the department that relates to a charge of misconduct against a fire fighter or 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 or fire department.

Local Gov’t Code § 143.1214(b); *see also* Open Records Decision No. 642 (1996) (applying section 143.1214 to documents relating to investigation by Houston Police Department’s Public Integrity Review Group where investigation concluded that allegations were unfounded).

You represent to this office that the requested information relates to an open and active internal affairs investigation of alleged misconduct by the deceased police officer and of possible misconduct by other officers. You also inform us that the investigation has not resulted in any sustained findings of misconduct or in disciplinary action. Based on these representations, we conclude that the information relating to the investigation is confidential in its entirety under section 143.1214(b) of the Local Government Code. Therefore, the information at issue must be withheld from all three requestors under section 552.101 of the Government Code. As we are able to make this determination, we need not consider your arguments under section 552.108.

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).

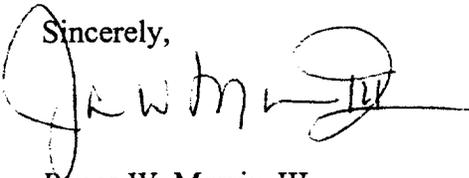
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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,

A handwritten signature in black ink, appearing to read 'J W Morris III', with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 150536

Enc: Submitted documents, audiotapes, and compact disc

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