ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2004

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251

OR2004-10805

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215388.

The Houston Police Department (the "department") received a request for the following information pertaining to a named police officer: 1) sustained complaints against the officer, 2) use of force incidents against the officer, 3) personnel orders with the officer's name on them, 4) memos and correspondence concerning this officer, 5) the "departmental 3 x 5," 6) the officer's payroll records, and 7) the officers's training history and instructor's observations. You claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.[1]

Initially, we note that you do not inform us whether you have released the remaining requested information or that the department does not have such information. Thus, to the extent that additional responsive information exists, we assume the department has released

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

it to the requestor. If not, the department must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. Section 143.089(g) of the Local Government Code provides:

> 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, but the 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. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Id. § 143.089(g); *see also City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied) (concluding that legislature intended to deem confidential information maintained by police department for its own use under Local Gov't Code § 143.089(g)); *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet. h.) (restricting confidentiality under section 143.089(g) to information reasonably related to police officer's or fire fighter's employment relationship); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files).

You inform us that the information submitted as Exhibit 8 is contained in the police officer's departmental personnel file maintained under section 143.089(g). Based on your representation and our review of the information at issue, we conclude that Exhibit 8 is confidential under section 143.089(g) of the Local Government Code and is therefore excepted from disclosure under section 552.101 of the Government Code as information made confidential by law.[2]

You argue that the remaining submitted information is protected from disclosure under section 142.1214 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

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[2]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 note that you have referred the requestor to the City of Houston's Human Resources Department.

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 state that the internal affairs investigations found in Exhibits 2, 3, 4, 6, and 7 pertain to unsustained or unfounded allegations of misconduct, and that Exhibit 5 pertains to a sustained allegation of misconduct that resulted in disciplinary action. Exhibit 9 is a complaint history. You state that the investigations found in Exhibits 2, 3, 4, 5, 6, and 7, and the complaint history in Exhibit 9, are maintained in files created by the police department for its own use and the information is not held in personnel files maintained under section 143.089(a) of the Local Government Code. You also represent that this information does not meet the conditions specified by section 143.1214(c) for inclusion in a police officer's civil service file. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(f). Based on your representations, and our review of the submitted information, we conclude that the submitted information contained in Exhibits 2, 3, 4, 5, 6, 7, and 9 is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. *See also* Open Records Decision No. 642 (1996) (concluding that files relating to investigations of Houston Fire Department personnel by Public Integrity Review Group of Houston Police Department were confidential under Loc. Gov't Code § 143.1214).

In summary, Exhibit 8 is confidential under section 143.089(g) of the Local Government Code and is therefore excepted from disclosure under section 552.101 of the Government Code as information made confidential by law. Exhibits 2, 3, 4, 5, 6, 7, and 9 are confidential under section 143.1214 of the Local Government Code, and are therefore excepted from disclosure under section 552.101 of the Government Code.[3]

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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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[3]Because we base our ruling on section 552.101 of the Government Code in conjunction with sections 143.089(g) and 143.1214 of the Local Government Code, we need not address your remaining arguments or claimed exceptions to disclosure.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

Tamara L. Harswick

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/jev

Ref: ID# 215388

Enc. Submitted documents

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