



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 20, 2005

Ms. Michele Austin  
Assistant City Attorney  
City of Houston Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2005-06470

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 228527.

The Houston Police Department (the "department") received a request for nine categories of information regarding two Houston police officers. You inform us that the department will release the departmental "3x5" and payroll records. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.119, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See Gov't*

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<sup>1</sup>We note that although you did not raise section 552.119 within the time prescribed by section 552.301(b), it can provide a compelling reason to overcome the presumption of openness. *See Gov't Code* § 552.301, .302. We also note that although you raised section 552.108, you did not explain how this exception applies to the information at issue. Thus, we presume you have withdrawn this exception. *See Gov't Code* § 552.301(b); Open Records Decision No. 363 (1983). Chapter 552 of the Government Code places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974).

Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling interest to withhold the information. See Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Because sections 552.101, 552.119, and 552.130 can provide compelling reasons to withhold information, we will consider your arguments regarding these exceptions.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information made confidential by other statutes. You contend that the submitted records in Exhibit 6 is excepted from disclosure under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. We understand that the city of Houston is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the civil service director 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 investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or in possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov't Code §§ 143.051-143.055. Such records are subject to release under chapter 552 of the Government Code. See *id.* § 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).

You state that the submitted records in Exhibit 6 are maintained in the police department's internal file pursuant to section 143.089(g). Based on your representation and our review of the documents at issue, we conclude that Exhibit 6 is confidential pursuant to section 143.089(g) and must be withheld under section 552.101 of the Government Code.

You also raise section 552.101 in conjunction with section 143.1214 of the Local Government Code. Section 143.1214 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 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 indicate that the information at issue in Exhibits 3 and 5 relates to investigations that did not result in disciplinary action. Thus, you indicate that the information is maintained by the department in a departmental file and is not part of the police officer's civil service personnel file. *See* Local Gov't Code § 143.1214(c); *see also* Local Gov't Code § 143.089(a)-(f). Based on your representations and our review of the information, we conclude that the information at issue in Exhibits 3 and 5 is excepted from disclosure under section 552.101 of the Government Code, in conjunction with section 143.1214 of the Local Government Code, as information made confidential by law. *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 section 143.1214).

The information at issue in Exhibits 2 and 4, however, relates to investigations that did result in disciplinary action. You indicate that the information in Exhibit 2 and 4 is maintained by the department in a departmental file. You also indicate that the department has "forwarded

the documents from Exhibit 2 and 4 meeting the requirements of § 143.1214(c) to the appropriate officer's personnel file maintained under 143.089(a)." However, you state that the submitted information in Exhibits 2 and 4 do not meet all of the conditions of section 143.1214(c). Based on your representations, we conclude that the submitted information contained in Exhibits 2 and 4 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).<sup>2</sup>

In summary, the information in Exhibit 6 must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Additionally, the information in Exhibits 2 through 5 must be withheld under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. As our ruling on these issues is dispositive, we need not address your remaining arguments.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

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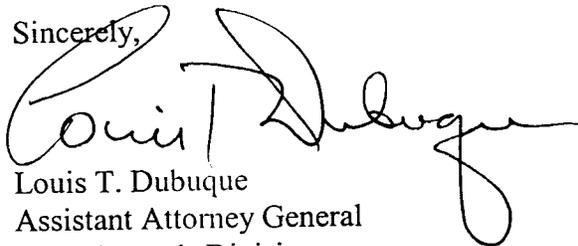
<sup>2</sup>You note that the department has directed the requestor to the City's Human Resources Department for further responsive information contained within the civil service file.

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); *Tex. Dep't of Pub. 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 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,



Louis T. Dubuque  
Assistant Attorney General  
Open Records Division

LTD/seg

Ref: ID# 228527

Enc. Submitted documents

c: Mr. Neal Davis  
DeGuerin Dickson & Hennessy  
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Houston, Texas 77002  
(w/o enclosures)