ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2005

Ms. YuShan Chang
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 1562
Houston, Texas 77002

OR2005-06991

Dear Ms. Chang:

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# 229305.

The Houston Police Department (the "department") received a request for "all employment records including [disciplinary] records, sustained complaints and any other documentation suggesting" that four named officers be disciplined. You claim that the requested information is excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.[1]

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 exception encompasses information that other statutes make confidential. You raise

[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.

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:
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> > (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, 4, and 7 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 officers' civil service personnel files. *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, 4, and 7 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, 5, 6, 8, and 9, however, relates to investigations that did result in disciplinary action. You indicate that this information is maintained by the department in a departmental file. You also indicate that you have forwarded the "documents meeting the requirements of § 143.1214(c) to the appropriate officers' personnel files maintained under 143.089(a)[.]" However, you state that the records in Exhibits 2, 5, 6, 8, and 9 do not meet all of the conditions of section 143.1214(c) for inclusion in the officers' civil service files. Based on your representations, we conclude that the information contained in Exhibits 2, 5, 6, 8, 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.[2] *See also* Open Records Decision No. 642.

In summary, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. As our ruling 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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[2]You note that the department will, however, direct 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); *Texas 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,

James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 229305

Enc. Submitted documents

c: Mr. Mark Hochglaube
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(w/o enclosures)