



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2011

Ms. Jessica C. Eales
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-03546

Dear Ms. Eales:

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# 411616 (Houston GC No. 18099).

The Houston Police Department (the "department") received a request for any investigations regarding a specified incident and any sustained complaints pertaining to a named officer. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under

controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The information in Exhibit 4 involves a child engaged in delinquent conduct that occurred after September 1, 1997. As such, this information constitutes a juvenile law enforcement record that is confidential pursuant to section 58.007(c). It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Accordingly, the department must withhold the information in Exhibit 4 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.¹

Section 552.101 of the Government Code also encompasses section 143.1214 of the Local Government Code. Section 143.1214 provides in pertinent 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

¹As our ruling is dispositive, we need not address your remaining argument for the information in Exhibit 4.

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 contend that the department must withhold the information in Exhibit 2 under section 143.1214 of the Local Government Code. You state the City of Houston is a civil service city under chapter 143 of the Local Government Code. We understand the information in Exhibit 2 is a record of an investigation by the department into four allegations of misconduct on the part of a department officer. The submitted information reflects one of the allegations was found to be justified. You state that two of the allegations were not sustained and there was no disciplinary action taken on the allegation that was sustained; thus, the information at issue does not meet the conditions specified by section 143.1214(c) for inclusion in the officer's personnel file under section 143.089(a) of the Local Government Code. We understand that the requestor is not a member of another law enforcement agency or fire department or a representative of the office of a district or United States attorney. Based on your representations, we agree that the information in Exhibit 2 is confidential under section 143.1214 and must be withheld from the requestor on that basis under section 552.101 of the Government Code. *See* 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 Local Gov't Code § 143.1214).

Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the information in Exhibit 3 pertains to a criminal investigation that concluded in a result other than conviction or deferred adjudication—specifically that the department “decline[d] charges in these matters [because] the suspects had already been arrested and charged in other cases.” Thus, we agree that section 552.108(a)(2) is applicable to Exhibit 3.

We note, however, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers

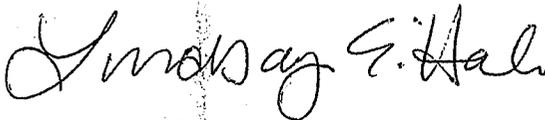
to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, the department may withhold the information in Exhibit 3 from disclosure based on section 552.108(a)(2). We note that the department has the discretion to release all or part of the information in Exhibit 3 that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary: (1) the department must withhold the information in Exhibit 4 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; (2) the department must withhold the information in Exhibit 2 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code; and (3) with the exception of basic information, the department may withhold the information in Exhibit 3 under section 552.108(a)(2) of the Government Code. The department must release the remaining information.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 411616

Enc. Submitted documents

c: Requestor
(w/o enclosures)