



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 16, 2011

Ms. Tiffany Evans  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2011-16880

Dear Ms. Evans:

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# 436502 (GC No. 18933).

The Houston Police Department (the "department") received a request for the complaint and sworn affidavit filed by the requestor in February 1995 against a named police officer. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the information submitted as Exhibit 3 is not responsive to the instant request, which is limited to the requestor's complaint and affidavit.<sup>1</sup> This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release that information in response to this request.

Initially, you acknowledge, and we agree, the department failed to submit the responsive information within the statutory time period prescribed by section 552.301(e) of the Government Code. *See Gov't Code* § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005,

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<sup>1</sup>You have submitted the complaint and affidavit as Exhibit 2.

no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). Because section 552.101 of the Government Code can provide a compelling reason to overcome this presumption, we will address your arguments under this section.

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. Section 552.101 encompasses section 143.1214 of the Local Government Code, which provides:

(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).<sup>2</sup> You explain the information submitted as Exhibit 2 pertains to an investigation conducted by the department’s Internal Affairs Division into

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<sup>2</sup>You inform us the City of Houston is a civil service city under Chapter 143 of the Local Government Code.

allegations of misconduct by the named officer. You do not inform this office that the requestor is another law enforcement agency, fire department, or the office of a district or United States attorney. You state the investigation resulted in disciplinary action against the officer under chapter 143 of the Local Government Code, and the department has forwarded the documents meeting the requirements of section 143.1214(c) to the officer's personnel file maintained under section 143.089(a). *See id.* § 143.089(a)-(f).

You represent the information submitted as Exhibit 2 does not meet the conditions of section 143.1214 for inclusion in the officer's civil service file. You indicate the information in Exhibit 2 is maintained by the department in its internal files and is not part of the officer's personnel file. Based on your representations and our review of the information, we find the information submitted as Exhibit 2 is confidential under section 143.1214(b) of the Local Government Code. Accordingly, the department must withhold the complaint and affidavit in Exhibit 2 under section 552.101 of the Government Code on that basis.

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 436502

Enc. Submitted documents

c: Requestor  
(w/o enclosures)