



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2013

Ms. Evelyn W. Njuguna
Staff Attorney
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2013-14107

Dear Ms. Njuguna:

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# 496239 (Houston OR No. 13-3006).

The Houston Police Department (the "department") received a request for the training records, personnel information, employment information, complaints, use of force incidents, payroll information, and job assignments of a named department police officer. You state the department will release some responsive information. You claim the remaining 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, a portion of which constitutes a representative sample.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." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code. You state the City of Houston is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the existence of two different types of

¹We assume 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.

personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055; *see* Attorney General Opinion JC-0257 (written reprimand is not disciplinary action for purposes of Local Gov't Code chapter 143). 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). *See Abbott v. 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 are in the 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.* Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See* Local Gov't Code § 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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us the information in Exhibits 2, 3, 4, and 5 is contained in a personnel file pertaining to the named officer that the department maintains for its own use under section 143.089(g). We note the information at issue contains commendations and periodic evaluations. This type of information is subject to section 143.089(a) and must be placed in the officer's civil service file, unless the department has already done so. *See* Local Gov't Code § 143.089(a)(1)-(3). Based on your representations and our review, we agree that Exhibits 2, 3, 4, and 5 are confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 143.1214 of the Local Government Code, which provides in relevant 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 disciplinary action against a fire fighter or police officer to the 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) 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 Exhibits 6, 7, and 8 consist of records of internal investigations of alleged misconduct on the part of a department police officer. You inform us the allegations in Exhibit 6 were sustained and disciplinary action was taken against the department officer. You inform us that all documents meeting the requirements of section 143.1214(c) were forwarded to the police officer's personnel file maintained under section 143.089(a) of the Local Government Code, and advise that the department will direct the requestor to the city's human resources department for further responsive information. You inform us the allegations in Exhibit 7 were not sustained, and no disciplinary action was taken. You inform us the allegations in Exhibit 8 were classified as justified, but no disciplinary action was taken. You state the information in Exhibits 7 and 8 does not meet the requirements of section 143.1214(c) for inclusion in the police officer's civil service personnel file. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(g). You explain the information at issue is maintained in the department's investigatory files. You state the requestor is not a representative of another law enforcement agency, a fire department, or the office of a district or United States attorney. *See id.* § 143.1214(b)(1)-(2). Based on your representations and our review, we agree Exhibits 6, 7, and 8 are confidential under section 143.1214 of the Local Government Code and must be withheld under section 552.101 of the Government Code.

In summary, the department must withhold Exhibits 2, 3, 4, and 5 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The department must withhold Exhibits 6, 7, and 8 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 496239

Enc. Submitted documents

c: Requestor
(w/o enclosures)