



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2014

Ms. Evelyn W. Kimeu
Staff Attorney
City of Houston Police Department
1200 Travis
Houston, Texas 77022-6000

OR2014-00700

Dear Ms. Kimeu:

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# 510614 (HPD ORU No. 13-6345).

The Houston Police Department (the "department") received a request for the "Police Officer's Accident Report" or the "Houston Police Department Crash Questionnaire" for all department officers involved in an at-fault department-issued vehicle accident with a sustained complaint since January 1, 2011. You claim 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 representative sample of information.¹

Initially, you state the information submitted as Exhibits 2A and 3A are not responsive to the present request for information, as they consists of records other than those specified by the requestor. Therefore, Exhibits 2A and 3A are not responsive to the present request. The

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.

department need not release nonresponsive information in response to this request, and this ruling will not address that information.

You state the department inadvertently provided the requestor access to a portion of the requested information in response to a prior request. We note the Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *but see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to Gov't Code § 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to Gov't Code § 552.108). In this instance, you inform us that the prior release was inadvertent. We note a governmental body is not precluded from invoking an exception to further public disclosure of information that has been released on a limited basis through no official action and against the wishes and policy of the governmental body. *See* Open Records Decision No. 376 at 2 (1983); *see also* Open Records Decision No. 387 at 3 (1983) (information that is not voluntarily released by a governmental body, but nevertheless comes into another party's possession, is not henceforth automatically available to everyone). Moreover, you claim section 552.101 of the Government Code, which is a confidentiality provision for the purposes of section 552.007 of the Government Code. Accordingly, we will address your claim under section 552.101 for the submitted information.

Section 552.101 of the Government Code excepts from public 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 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.

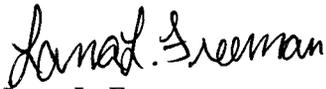
Id. § 143.1214(b)-(c). You explain the information submitted as Exhibits 2 and 3 consist of records of internal investigations of alleged misconduct on the part of department police officers. You state the allegations in Exhibit 2 were sustained, disciplinary action was taken, and all documents meeting the requirements of section 143.1214(c) were forwarded to the police officers' personnel files maintained under section 143.089(a) of the Local Government Code. *See id.* § 143.1214(b)(3), (c)(1)-(3). You inform us the information contained in Exhibit 2 is maintained in the department's investigatory files and is not part of the officers' civil service files. You further explain the allegations in Exhibit 3 were sustained and no disciplinary action was taken against the police officers. You state this information does not meet the requirements of section 143.1214(c) for inclusion in the police officers' civil service personnel files. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(g). You inform us the information in Exhibit 3 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 conclude the department must withhold Exhibits 2 and 3 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,



Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/bhf

Ref: ID# 510614

Enc. Submitted documents

c: Requestor
(w/o enclosures)