



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 16, 2014

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

OR2014-10309

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# 526018 (ORU No. 14-1923).

The Houston Police Department (the "department") received a request for three categories of information, including a specified internal affairs investigation of a named officer, including associated documentation; copies of the statistical report of the number of internal investigations the department performed from 2004 to the time of the request; and the number of citizen commendations of department officers for each year from 2004 to the time of the request. You state you will release some information to the requestor. You claim the remaining requested 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 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 Exhibit 2 consists of records of an internal investigation of alleged misconduct on the part of a department police officer. 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 officer's personnel file 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 officer's civil service file.<sup>1</sup> 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 Exhibit 2 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code.<sup>2</sup>

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<sup>1</sup>You state the department will direct the requestor to the City of Houston Human Resources Department for further responsive information.

<sup>2</sup>As our ruling is dispositive for Exhibit 2, we need not address your remaining argument against its disclosure.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate 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 Exhibits 3, 5, 6, 7, 8, and 9 pertain to criminal investigations that concluded in a result other than conviction or deferred adjudication. You state Exhibit 4 pertains to a concluded criminal investigation involving two suspects that did not result in conviction or deferred adjudication for one of the suspects. You further assert, although one of the suspects was convicted in connection with this matter, the information concerning the convicted suspect and the suspect who was not convicted is so intertwined that it cannot easily be separated. Accordingly, we agree section 552.108(a)(2) is applicable to Exhibits 3 through 9.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 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); *see also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold Exhibits 3 through 9 under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. With the exception of basic information, the department may withhold Exhibits 3 through 9 under section 552.108(a)(2) of the Government Code.<sup>3</sup>

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.

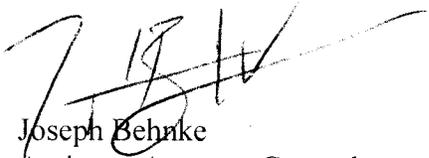
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>3</sup>Although basic information includes an arrestee's social security number, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Behnke", written over a horizontal line.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 526018

Enc. Submitted documents

c: Requestor  
(w/o enclosures)