



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 7, 2015

Mr. Jeffrey C. Monk
Administration Manager
City of Houston
1200 Travis
Houston, Texas 77002-6000

OR2015-20983

Dear Mr. Monk:

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# 582313 (ORU No. 15-4690).

The Houston Police Department (the "department") received a request for information related to three named peace officers, including sustained complaints, personnel orders, "departmental 3x5," payroll records, and training histories related to the named peace officers. You state you will release some information to the requestor. You claim the submitted 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.

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 section 143.1214 of the Local Government Code, which provides in relevant part, the following:

- (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 explain Exhibit 2 consists of records of an internal investigation of alleged misconduct on the part of a department police officer. The submitted documentation reflects the allegations were sustained and you state disciplinary action was taken against the police officer. You inform us all documents meeting the requirements of section 143.1214(c) were forwarded to the appropriate 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 further inform us Exhibit 2 is maintained in the department's investigatory files and is not part of the officer's civil service file.¹ 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 these representations, 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.

Section 552.101 of the Government Code also encompasses section 143.089 of the Local Government Code, which contemplates two different types of personnel files: a police

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

officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. *Id.* § 143.089(a), (g). 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).² *Abbott v. City of 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 in 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 are subject to release under the Act. *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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us the information in Exhibit 3 is “contained in the officers' personnel files [that] are maintained internally by [the department] for its own use and relates to the officers' employment relationship with the police department.” Based on your representations, we agree Exhibit 3 is confidential under section 143.089(g) of the Local Government Code, and the department must withhold it under section 552.101 of the Government Code on that ground.

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. The department must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 143.089(g) 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

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055.

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', with a long horizontal stroke extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 582313

Enc. Submitted documents

c: Requestor
(w/o enclosures)