



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2017

Ms. Kristie L. Lewis
Staff Attorney
Houston Police Department
1200 Travis Street, 21st Floor
Houston, Texas 77002-6000

OR2017-09803

Dear Ms. Lewis:

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# 656861 (ORU No. 17-1455).

The Houston Police Department (the "department") received a request for all information pertaining to a specified internal affairs case number. You claim the submitted 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 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, 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 state the City of Houston is a civil service city under chapter 143 of the Local Government Code. You explain Exhibit 2 consists of records of an internal investigation of alleged misconduct on the part of a department police officer. You state the allegations at issue were sustained. We understand no disciplinary action was taken. Thus, you inform us the information at issue is maintained in the department's investigatory files and is not part of the officer's civil service file. There is no indication the requestor is 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 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.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See 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.*; *see also id.* § 552.301(e)(1)(A). You state, and provide documentation showing, Exhibit 3 pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Based on your representations, we find section 552.108(a)(2) is applicable to this information.

However, section 552.108(a)(2) 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559, 560-61 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold Exhibit 3 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, which the department must release, the department may withhold Exhibit 3 under section 552.108(a)(2) of the 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 656861

Enc. Submitted documents

c: Requestor
(w/o enclosures)