



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1996

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0666

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38182.

The City of Houston (the "city") received a request for "all police reports, PIRG reports, internal investigative reports, fire department reports, and any and all records relating to internal investigations within the fire department since October 1, 1995." You state that the requestor clarified his request to seek only documents related to internal investigations of the fire inspections performed at night clubs since October 1, 1995. You also state that the city released some of the requested information. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107(1), and 552.108 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.1214(b) of the Local Government Code provides:

(b) The department shall maintain an investigatory document 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 a police officer that the department did not sustain, only in a file created by the department for the department's use. The department may not release those documents to any agency

or other person except another law enforcement agency or fire department.

You claim that the documents in Exhibit 3 are excepted from disclosure under section 143.1214(b) as applied through section 552.101 of the Government Code. These documents relate to unfounded complaints held by the Houston fire department. We therefore agree that the city must withhold the documents in Exhibit 3 under section 552.101 of the Government Code.

You next claim that section 143.089(g) of the Local Government Code excepts from disclosure the information contained in Exhibit 4 submitted to this office for review. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the fire department is required to maintain as part of the fire fighter's civil service file, and one that the fire department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g). You state that the documents in Exhibit 5 are from the department's internal affairs departmental files, which are kept for the department's own use. Therefore, we are considering only those files which may be maintained by the police department for its own internal use under section 143.089(g).

Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. In cases in which a fire or police department takes disciplinary action against a fire fighter or police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the personnel files maintained under section 143.089(a). Such records may not be withheld under section 552.101 of the act. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6.

We cannot ascertain whether the investigations evidenced by the documents you have submitted to us as Exhibit 4 resulted in disciplinary action. We note, however, that if

the investigations did not result in disciplinary action, information maintained by the fire department that relates to such investigations must be withheld from required public disclosure under section 552.101 of the act in conjunction with section 143.089(g) of the Local Government Code.¹ However, if any of the internal affairs investigations did result in disciplinary action, then “any record, memorandum, or document relating to” the disciplinary action must be placed in the personnel files maintained by the civil service commission under section 143.089(a) and must be released by the civil service commission under section 143.089(f) of the Local Government Code.

You claim that the document submitted to this office as Exhibit 6 is excepted from disclosure under section 552.107(1) of the Government Code. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. *Id.* at 5. We have reviewed Exhibit 6 and agree that the city may withhold that document under section 552.107(1).

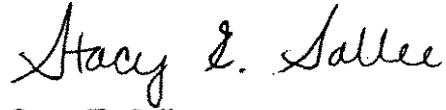
The last two documents for which you claim an exception to disclosure are two investigative files conducted by the Public Integrity Review Group (“PIRG”). You claim that these files are excepted from disclosure under sections 143.1214(b) and 143.089(g) of the Local Government Code and section 552.108 of the Government Code. Section 143.1214(b) of the Local Government Code requires “the department” to withhold from disclosure “an investigatory document that relates to a disciplinary action against a fire fighter . . . that was overturned on appeal” and “any document in the possession of the department that relates to a charge of misconduct against a fire fighter . . . that the department did not sustain.” In Open Records Decision No. 642 (1996), a copy of which is enclosed, this office concluded that “the department” in section 143.1214(b) included PIRG. You inform us that the findings resulting from the PIRG investigations are on administrative appeal. Therefore, as these charges have not yet been sustained by the department, the city must withhold the documents submitted as Exhibit 7 under section 143.1214(b). We note, however, that if these charges do result in disciplinary action, then “any record, memorandum, or document relating to” the disciplinary action must be placed in the personnel files maintained by the civil service commission under section 143.089(a) and must be released by the civil service commission under section 143.089(f) of the Local Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

¹We also note that section 143.089(g) requires a fire department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director’s designee.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 38182

Enclosures: Submitted documents
Open Records Decision No. 642 (1996)

cc: Mr. Wayne Dolcefino
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P.O. Box 13
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(w/o submitted documents; with/Open Records Decision No. 642 (1996))