



April 8, 1999

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

OR99-0932

Dear Ms. Nguyen:

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# 123328.

The City of Houston (the "city") received a request for "a copy of the results or any findings that were concluded from the internal affairs investigation involving the incident at the academy," concerning the requestor's brother. In response to the request, you submit to this office for review a copy of the records at issue. You contend that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the claimed exceptions and have reviewed the information submitted.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Chapter 143 of the Local Government Code sets forth civil service rules for municipal fire and police departments. Subchapter G of that chapter sets forth provisions applicable to municipalities with a population of 1.5 million or more, including the City of Houston. *See* Open Records Decision No. 642 (1990).¹

Section 143.1214(b) of the Local Government Code requires "the [fire or police] 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

¹We also note that in Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Local Gov't Code § 143.089(a), (g).

a fire fighter . . . that the department did not sustain.” You represent that “[t]he information at issue reflects certain alleged violations of the Houston Fire Department Rules and regulations by a City’s firefighter, two of which were unsustained,” following an investigation. Therefore, since two of the alleged violations were not sustained by the department, the city must withhold the information, concerning the unsustained charges, from disclosure under section 552.101 in conjunction with section 143.1214(b) of the Local Government Code.

However, as for the remaining alleged violations, you represent that “the action taken against the firefighter on the sustained charges is not a formal disciplinary action subject to grievance appeal as provided by Chapter 143, . . . and are not included in the public service personnel file of the employee.” Therefore, you represent that the remaining responsive information held by the city fire department, concerning the sustained charges, pertain to a complaint which did not result in disciplinary action as contemplated by chapter 143 of the Local Government Code. *See* Gov’t Code § 143.089(a)(2).² Based on your representations, we believe that these records are made confidential under section 143.089(g) of the Local Government Code, and thus may not be released to the requestor.³ *See also City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied).

Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires the city to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). In this instance, if the individuals whose information is at issue have “requested that this information not be made available to the public,” then such information must be withheld. You may not, however, withhold this information if the employee had not made a request for confidentiality under section 552.024 prior to the time this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Accordingly, you must redact the information subject to section 552.117 wherever it is located in the submitted records.

²Generally, in cases in which a city’s police or fire department takes disciplinary action against an employee, it is required by section 143.089(a)(2) to transfer records relating to the investigation and disciplinary action to the civil service commission. Such records may not be withheld under the Local Government Code’s provisions. Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

³As we conclude that Exhibit 2, including Exhibits 2A and 2B, must be withheld under section 552.101 in conjunction with Chapter 143 of the Local Government Code, we need not consider your other claim under section 773.091 of the Health and Safety Code at this time.

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

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 123328

Encl.: Submitted information

cc: Mr. David R. Zalesnik
19306 Kristen Pine Drive
Humble, Texas 77346
(w/o enclosures)