



August 8, 2000

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-2991

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137893.

The City of Houston (the "city") received a request for the file of a specified Inspector General criminal investigation. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with Local Government Code section 143.089. You have submitted the responsive information to this office for review. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You assert that the documents in the requested file are confidential under section 143.089 of the Local Government Code.

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. In relevant part section 143.089 of that code provides:

- (a) The [civil service] director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

- (1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;
 - (2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and
 - (3) the periodic evaluation of the fire fighter or police officer by a supervisor.
- (b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.
- (c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:
- (1) the disciplinary action was taken without just cause; or
 - (2) the charge of misconduct was not supported by sufficient evidence.
- (g) 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.

You inform us that "the investigation resulted in a conclusion that the allegations were unfounded. Thus no disciplinary action resulted." We also note that the file includes the notation "UNFOUNDED." Because the complaint did not result in disciplinary action, the file cannot be held in the officer's 143.089(a) personnel file. Local Gov't Code §§ 143.089(b),(c)(2). You inform us that "[t]he investigation at issue is kept in an internal departmental file for the department's own use." We therefore conclude that the requested information, in the fire department's file, is confidential pursuant to section 143.089(g) of

the Local Government Code and must be withheld from disclosure under section 552.101 of the Government Code.

Here we note that the request was made to the Office of the Inspector General, which is the agency that conducted the investigation. The criminal investigation files of the Inspector General are not made confidential by section 143.089(g) of the Local Government Code. These files are subject to Local Government Code section 143.1214, which controls investigatory files where disciplinary actions were overturned, or those in which a complaint of misconduct was unsustainable. Subsection (b) of section 143.1214 provides

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 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.

Loc. Gov't Code § 143.1214(b) (emphasis added).

The term "department" as used in this subsection refers not exclusively to the fire department, but to the agency which conducted the investigation. Open Records Decision No. 642 (1996). In this case, the investigating agency is the Inspector General. Therefore, the subject file in the possession of the Inspector General is made confidential by section 143.1214(b) of the Local Government Code, and must be withheld under section 552.101 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/lr

Ref: ID# 137893

Encl Submitted documents

cc: Mr. Phillip Henry
5025 Pederson
Houston, Texas 77033
(w/o enclosures)