



March 27, 2001

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-1205

Dear Mr.Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145318.

The City of Houston (the "city") received a request for a specified internal affairs investigation. You claim that the requested 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 552.022 provides in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under [chapter 552 of the Government Code] unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Thus, pursuant to section 552.022(a)(1), the completed internal affairs investigation is subject to required public disclosure under chapter 552 of the Government Code unless other law expressly provides that it is confidential.

You contend that the submitted information is confidential under section 552.101 of the Government Code in conjunction with sections 143.1214(b) and 143.089(g) of the Local Government Code. Chapter 143 of the Local Government Code encompasses civil service rules for municipal fire and police departments. Subchapter G of chapter 143 is applicable to a municipality with a population of 1.5 million or more, including the City of Houston.

Subchapter G includes section 143.1214 of the Local Government Code, which provides in relevant part:

(b) The department shall maintain an investigatory document that relates to a disciplinary action against a fire fighter . . . 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 . . . 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.

Local Gov't Code § 143.1214(b).

You explain that the submitted information contains records of an internal investigation located in the Houston Fire Department Internal Affairs Unit of the Office of Inspector General. You state that the information reflects an unsustained allegation against a fire fighter and that it is kept solely in the Houston Fire Department's investigative file for the department's own use. We agree that the department's records of internal affairs investigations that do not result in disciplinary action are confidential under section 143.1214, and that the information at issue here consists of those types of records. Based on your representations and our review of the submitted information, we conclude that it is confidential under section 143.1214 of the Local Government Code and, therefore, not subject to release under section 552.022(a) of the Government Code. *See also* Open Records Decision No. 642 (1996) (applying section 143.1214 to files relating to investigations of City of Houston Fire Department personnel by Public Integrity Review Group). Therefore, the city must withhold the submitted internal affairs file, videos, and tapes pursuant to section 552.101 of the Government Code in conjunction with section 143.1214(b) of the Local Government Code.¹

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

¹We note that the submitted Internal Affairs Division investigation report includes an offense report. A record that was not created in the course of the IAD investigation is not made confidential by its inclusion in a file that is subject to section 143.1214 of the Local Government Code. Thus, if these records exist elsewhere, outside of the section 143.1214 file, they would be subject to disclosure under the Public Information Act. *See* Gov't Code §§ 552.006, 552.022. Having found the information excepted under section 143.1214(b) of the Local Government Code, we need not address section 143.089(g) of the Local Government Code.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 145318

Encl: Submitted information

cc: Mr. David Ray Hearne
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(w/o enclosures)