



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2004

Ms. Mia Settle-Vinson  
Assistant City Attorney  
City of Houston - Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2004-7853

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208776.

The City of Houston (the "city") received a request for a copy of the legal argument the city submitted to this office in connection with a prior public information request by the present requestor, which this office assigned ID# 205741.<sup>1</sup> You state that in compliance with section 552.301(d)(2) of the Government Code, you forwarded a copy of the city's legal argument to the requestor on July 23, 2004, with certain information redacted. We understand you to represent that the information you redacted from the copy released to the requestor at that time is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by noting that a governmental body's communications to this office are generally considered to be available to the public, except to the extent that a governmental body's correspondence or legal argument reveals the information that the governmental body seeks to withhold under the Public Information Act (the "Act"). *See* Open Records Decision Nos. 508 (1988), 459 (1987). You contend that the legal argument that is the subject of the present request reveals information that the city previously sought to withhold under section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. We determined that the information at issue in Open Records Letter No. 2004-6226 (2004) is confidential pursuant to sections 143.089

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<sup>1</sup> We ruled on that request in Open Records Letter No. 2004-6226 (2004), issued July 26, 2004.

and 143.1214 of the Local Government Code and is therefore excepted under section 552.101. Here, you contend that “releasing the [redacted] portions of [the city’s legal argument] would reveal the very details contained in the responsive records that the City sought to protect.” Because you contend that release of the redacted portions of the city’s legal argument would reveal information found to be confidential in our previous ruling, we address your claim that the information you have highlighted in the copy of the city’s legal argument you have submitted for review is excepted from disclosure under section 552.101 in conjunction with sections 143.089 and 143.1214.

Section 143.089(g) of the Local Government Code 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.

Local Gov’t Code § 143.089(g); *see also City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied) (concluding that legislature intended to deem confidential information maintained by police department for its own use under Local Gov’t Code § 143.089(g)); *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet. h.) (restricting confidentiality under section 143.089(g) to information reasonably related to police officer’s or fire fighter’s employment relationship); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files).

Section 142.1214 of the Local Government Code provides in part:

(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 a disciplinary action against a fire fighter or police officer to the [civil service] 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) [of the Local Government Code] 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 indicate that the highlighted information in the city's legal argument reveals information that is contained in the departmental personnel file maintained under section 143.089(g) for the police officer at issue. You also indicate that the highlighted information reveals information maintained in files created by the police department for its own use, that does not meet the conditions specified by section 143.1214(c) for inclusion in a police officer's civil service file. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(f). Based on your representations and our review, we agree that the highlighted portions of the city's legal argument reveal information that is confidential under sections 143.089(g) and 143.1214 of the Local Government Code. Accordingly, we have marked the information in the city's legal argument that the city must withhold pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 508 (1988); *See also* Open Records Decision No. 642 (1996) (concluding that files relating to investigations of Houston Fire Department personnel by Public Integrity Review Group of Houston Police Department were confidential under section 143.1214). We further find, however, that the remainder of the information in the city's legal argument is not maintained in internal departmental files and does not reveal information made confidential under sections 143.089(g) or 143.1214. We therefore conclude that the remainder of the city's legal argument is not excepted from disclosure under section 552.101 of the Government Code and must be released to the requestor.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 208776

Enc: Submitted documents

c: Mr. James K. Shipley  
8142 Misty Ridge Lane  
Houston, Texas 77071  
(w/o enclosures)