ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2006

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001

OR2006-03386

Dear Mr. Gambrell:

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# 245815.

The Houston Police Department (the "department") received a request for information pertaining to a former department employee. You claim that the requested information is excepted from disclosure under sections 552.101, 552.1175, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 143.1214 of the Local Government Code.[1] Section 143.1214 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

[1]We understand that the City of Houston is a civil service city under chapter 143 of the Local Government Code.

> 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 state that the submitted information, which consists of the department's Internal Affairs Division investigatory file, relates to an investigation that did result in disciplinary action. You also state that this information is maintained by the department in a departmental file. Furthermore, you inform us that the department has forwarded the "documents . . . meeting the requirements of [section] 143.1214(c) to the appropriate officer's personnel files maintained under 143.089(a)." However, you state that the submitted information does not meet all of the conditions of section 143.1214(c) for inclusion in the officer's civil service file. Therefore, based on your representations, we conclude that the submitted information is confidential under section 143.1214 of the Local Government Code.[2] *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).

Generally, all information subject to section 143.1214 of the Local Government Code must be withheld. However, in this instance, the submitted information contains the former employee's fingerprints. Access to fingerprint information is governed by section 560.002 of the Government Code, which provides as follows:

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[2]You note that the department will direct the requestor to the city's Human Resources Department for further responsive information contained within the civil service file.

> A governmental body that possesses a biometric identifier of an individual:
>
> > (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
> >
> > > (A) the individual consents to the disclosure;
> > >
> > > (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
> > >
> > > (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
> >
> > (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Gov't Code § 560.002. Under this provision, the requestor would have a right of access to the submitted fingerprints if she is an agent for the individual to whom the fingerprints belong. In that case, there would be a conflict of laws between section 143.1214 and section 560.002. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App.1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). In this instance, section 560.002 is more specific than the general confidentiality provision in section 143.1214. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision). Therefore, if the requestor is the former employee's agent, the fingerprints must be released to her. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. However, if she is not her agent, the fingerprints, along with the remainder of the submitted information, must be withheld under section 552.101 in conjunction with section 143.1214. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 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 Office of the Attorney General 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,

James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 245815

Enc. Submitted documents

c: Ms. Michelle Stallworth
MCS
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Pittsburgh, Pennsylvania 15219
(w/o enclosures)