



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2009

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston- Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2009-01189

Dear Ms. De La Garza:

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# 332116.

The City of Houston (the "city") received two requests for information pertaining to a named former police officer. You assert that one of the requests was withdrawn by operation of law. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, you assert that one of the requests has been withdrawn by operation of law because the requestor has failed to respond to an itemized cost estimate for copies of responsive documents. *See* Gov't Code § 552.2615. Under section 552.2615, a governmental body is required to provide a requestor with an estimate of charges when a request to inspect a paper record will result in the imposition of a charge that will exceed forty dollars. *See id.* The relevant portion of section 552.2615 provides:

¹You inform this office that the submitted information was inadvertently released to a member of the public in response to a previous request. The inadvertent release of this information does not constitute a waiver of the city's claim that the information is made confidential by law. *See* Gov't Code § 552.007 (governmental body may not voluntarily release information if disclosure is prohibited by law or information is confidential under law).

(a) [T]he governmental body must inform the requestor of the responsibilities imposed on the requestor by this section and of the rights granted by this entire section and give the requestor the information needed to respond, including:

(1) that the requestor must provide the governmental body with a mailing, facsimile transmission, or electronic mail address to receive the itemized statement and that it is the requestor's choice which type of address to provide;

(2) that the request is considered automatically withdrawn if the requestor does not respond in writing to the itemized statement and any updated itemized statement in the time and manner required by this section; and

(3) that the requestor may respond to the statement by delivering the written response to the governmental body by mail, in person, by facsimile transmission if the governmental body is capable of receiving documents transmitted in that manner, or by electronic mail if the governmental body has an electronic mail address.

(b) A request . . . is considered to have been withdrawn by the requestor if the requestor does not respond in writing to the itemized statement by informing the governmental body within 10 days after the date the statement is sent to the requestor that

(1) the requestor will accept the estimated charge;

(2) the requestor is modifying the request in response to the itemized statement; or

(3) the requestor has sent to the attorney general a complaint alleging that the requestor has been overcharged for being provided with a copy of public information.

Gov't Code § 552.2615(a), (b). You inform us, and provide supporting documentation, that you provided the requestor with an itemized cost estimate for the information responsive to his request. Upon review, we agree that the cost estimate complies with the requirements of section 552.2615. Further, you state that the requestor did not respond to the issued estimate in accordance with section 552.2615. Accordingly, we agree that section 552.2615(b) is applicable as to that individual's request, and thus, that individual's

request was withdrawn by operation of law. Therefore, the city need not provide that requestor with the information he requested.

Next, we note that you have only submitted information responsive to one category of the remaining request. To the extent any additional responsive information existed on the date the city received that request, we assume you have released it. If you have not released any such records, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by statute. You contend the submitted information is excepted from disclosure under section 552.101 in conjunction with section 143.089 of the Local Government Code.² Section 143.089 contemplates two different types of personnel files: a police officer’s civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov’t Code § 143.089(a), (g). The police officer’s civil service file must contain certain specified items, including commendations, periodic evaluations by the officer’s supervisor, and documents from the employing department relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code.³ *Id.* § 143.089(a)(1)-(2). Information maintained in a police department’s personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You explain that the submitted information is maintained in the department’s internal personnel file and consists of documents that pertain to the officer’s employment relationship with the department. Therefore, based on your representation and our review of the information at issue, we conclude that the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

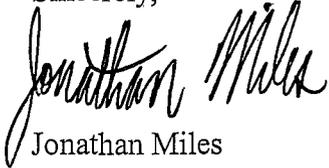
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

²We understand that the City of Houston is a civil service city under chapter 143 of the Local Government Code.

³Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 332116

Enc. Submitted documents

c: Requestor
(w/o enclosures)