



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 3, 2009

Ms. Evelyn Njuguna  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 368  
Houston, Texas 77001-0368

OR2009-04418

Dear Ms. Njuguna:

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# 338977.

The Houston Fire Department (the "department") received a request for investigative documents related to a specified complaint involving a named fire fighter. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.1175 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." Gov't Code § 552.101. This section encompasses information protected by other statutes. You inform us that the City of Houston (the "city") is a civil service city under chapter 143 of the Local Government Code. Section 143.1214 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 disciplinary action against a fire fighter or police officer to the director or the director's designee for inclusion in the firefighter's or police officer's personnel file maintained under Sections 143.089(a)-(f) 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 consists of an investigation, conducted by the city's Office of the Inspector General, of alleged misconduct by a department fire fighter. You inform us that allegations were sustained and that disciplinary action was taken. You also state that the department has forwarded the documents meeting the conditions of section 143.1214(c) to the fire fighter's personnel file maintained under section 143.089(a) of the Local Government Code.<sup>1</sup> Based on your representations and our review of the information at issue, we agree that section 143.1214 of the Local Government Code applies to the submitted information. *See* Open Records Decision No. 642 (1996).

We note, however, that the requestor is a Department of State Health Services (the "DSHS") investigator who is investigating the fire fighter at issue. The requestor states that she is requesting investigation records pertaining to the fire fighter at issue pursuant to chapter 773 of the Health and Safety Code. Section 773.0612 provides that the DSHS or its representative "is entitled to access to records and other documents... that are directly related to... emergency medical services personnel to the extent necessary to enforce [chapter 773 of the Health and Safety Code] and the rules adopted under [chapter 773 of the Health and

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<sup>1</sup>Section 143.089(a) of the Local Government Code provides for the existence of a civil service file that must contain certain types of information relating to a fire fighter. *See* Local Gov't Code § 143.089(a).

Safety Code].” Health & Safety Code § 773.0612(a). The submitted information pertains to a fire fighter who is also an emergency medical technician/paramedic licensed under chapter 773 of the Health and Safety Code. Because the submitted information is directly related to emergency medical services (“EMS”) personnel and the requestor is conducting an investigation under chapter 773, we conclude that section 773.0612 applies to the submitted information.

Thus, the instant situation presents a conflict between section 143.1214 of the Local Government Code and section 773.0612 of the Health and Safety Code. Where information falls within both a general and a specific statutory provision, the specific statutory provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail. *See* Gov’t Code § 311.026; *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. 583 (1990), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

Section 773.0612 specifically grants the DSHS access only to information related to EMS personnel and only to the extent necessary to conduct an investigation of the person at issue, whereas the general protection given by section 143.1214 applies to all investigation files relating to disciplinary actions overturned on appeal or documents relating to charges of misconduct whether sustained or not, for all fire fighters and police officers. *See* Health & Safety Code § 773.0612; Local Gov’t Code § 143.1214. Therefore, we find that the access provision of section 773.0612 is more specific than the confidentiality provision of section 143.1214. Although section 143.1214 was later enacted,<sup>2</sup> we have no indication that the legislature intended that section 143.1214 prevail over section 773.0612. Therefore, because section 773.0612 is the more specific statute, we find section 773.0612 prevails over section 143.1214. Accordingly, the department may not withhold the submitted information under section 143.1214.<sup>3</sup> You claim, however, that portions of the submitted information are also excepted from disclosure under sections 552.101 and 552.1175 of the Government Code. Accordingly, we must address whether your claims under these provisions prevail over the requestor’s right of access under section 773.0612.

Section 552.101 encompasses section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies to an

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<sup>2</sup>Act of May 13, 1993, 73d Leg., R.S., ch. 220, § 3, 1993 Tex. Gen. Laws 463, 464 (Vernon) (codified as section 143.1214 of the Local Government Code); Act of March 25, 1991, 72<sup>nd</sup> Leg., R.S., ch. 14, § 264, 1991 Tex. Gen. Laws 42, 206 (Vernon) (codified as section 773.0612 of the Health and Safety Code).

<sup>3</sup>We note that information obtained by DSHS pursuant to section 773.0612(a) is confidential in the hands of DSHS. *See* Health & Safety Code § 773.0612(b).

emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). You inform us that the city is part of an emergency communication district that was established under section 772.318. You state that the submitted information contains the originating telephone numbers and addresses of 9-1-1 callers that were furnished by a service provider. Upon review, we determine that the 9-1-1 callers' telephone numbers and addresses you have marked are confidential under section 772.318 of the Health and Safety Code.

However, as noted above, section 773.0612 provides the requestor a statutory right of access to certain information directly pertaining to EMS personnel. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 773.0612 generally allows the requestor access to information relating to EMS personnel that are being investigated by DSHS, section 772.318 of the Health and Safety Code specifically protects the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. We therefore conclude that, notwithstanding the provisions of section 773.0612, the department must withhold the addresses and telephone numbers you have marked pursuant to section 772.318.

Next, you assert that some of the remaining information is excepted under section 552.1175 of the Government Code. Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). In the submitted documents, you have marked the home address and home telephone numbers of peace officers that may be subject to section 552.1175. To the extent this information pertains to currently licensed peace officers who elect to restrict access to this information in accordance with section 552.1175(b), it must generally be withheld. However, this office has found that specific statutory right of access provisions prevail over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986). Therefore, the requestor's statutory right of access under section 773.0612 prevails over the general exception to disclosure found in section 552.1175 of the Government Code. Accordingly, the department may not withhold any information under section 552.1175.

We note that the remaining information contains Texas driver's license information, which is excepted from disclosure under section 552.130 of the Government Code.<sup>4</sup> This section excepts from public disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Unlike section 552.1175, section 552.130 makes information confidential and contains its own release provisions. Thus, section 552.130 is not a general provision under the Act. Additionally, section 552.130 was passed in a later legislative session than section 773.0612.<sup>5</sup> Therefore, notwithstanding the access provision of section 773.0612, because section 552.130 is the more specific statute and was enacted later in time, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, (1) the department must withhold the addresses and telephone numbers you have marked pursuant to section 552.101 of the Government Code in conjunction with section 772.318; and (2) the department must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.<sup>6</sup>

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

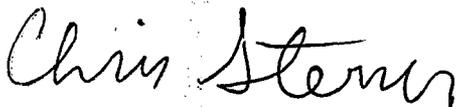
<sup>5</sup>Act of May 30, 1997, 75<sup>th</sup> Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 (Vernon) (codified as section 552.130 of the Government Code).

<sup>6</sup>If the department receives another request for the submitted investigative records from a person who would not have a special right of access to portions of the information, the department should resubmit the investigative records and request another decision. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

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.

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](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,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 338977

Enc. Submitted documents

c: Requestor  
(w/o enclosures)