



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2009

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

OR2009-05341

Dear Ms. Chang:

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# 340481.

The City of Houston Inspector General's Office (the "city") received a request for the complaint, witness statements, employee names, disciplinary actions, and the final report related to a specific incident, and information related to report number 132540306H. You state you have no information related to report number 132540306H.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note a portion of the requested information is the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-04740 (2009). In the prior ruling, this office determined that the city's fire department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. We have no indication that the law, facts, and circumstances on which the prior ruling was based have changed. Therefore, the city must continue to rely on Open Records Letter No. 2009-04740 as a previous determination and withhold the information at issue in accordance with the prior

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We now address your arguments for the information that is not subject to the prior ruling. 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, such as section 143.1214 of the Local Government Code, which 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 state that the remaining information is maintained in the city's investigatory files and that the requestor is not another law enforcement agency, fire department, or the office of a district or United States attorney. You state that the remaining information relates to an investigation that resulted in disciplinary action for one of the fire fighters under chapter 143 of the Local Government Code. You state that the city

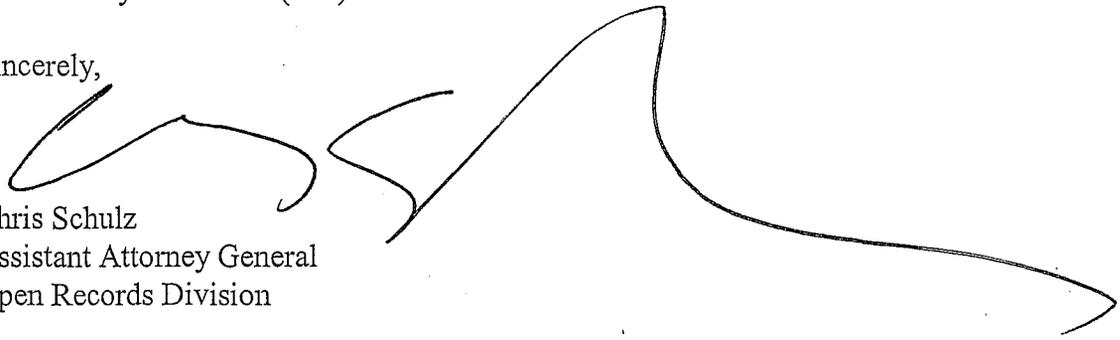
has forwarded the documents from the submitted information meeting the requirements of section 143.1214(c) to the fire fighter's personnel file maintained under section 143.089(a). Additionally, you inform us that the remaining information does not meet the conditions for release of investigatory files in section 143.1214(c). Based on your representations and our review of the submitted documents, we conclude that the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code.²

In summary, the city must continue to rely on Open Records Letter No. 2009-04740 as a previous determination and withhold the information at issue in accordance with the prior ruling. The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 143.1214 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.

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 340481

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information.