



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 16, 2009

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

OR2009-13065

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# 356424 (Houston PIR#s 15802, 15803, 15804, 15807, and 15826).

The Houston Fire Department (the "department") received five requests for recordings of all department radio communications received between 7 a.m. and 8 a.m. on July 8, 2009; the gender discrimination complaint filed by two individuals on July 29, 2009 regarding Houston Fire Station 54 and any department response to that complaint; all complaints filed by employees at Station 54 from July 1 to July 8, 2009; and all complaints filed at Station 54 in the five years prior to July 10, 2009. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.<sup>1</sup>

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 employee complaints in Exhibit 2 relate to active investigations of alleged misconduct, and the employee complaint in Exhibit 4 relates to an investigation that did not result in disciplinary action. You state that the employee complaint in Exhibit 3 relates to a closed investigation that resulted in disciplinary action for the firefighter under chapter 143 of the Local Government Code. You state that the requested employee complaints are maintained in the department's investigatory files for the department's own use and that the requestor is not another law enforcement agency, fire department, or the office of a district or United States attorney. You further state that the department has forwarded the documents from Exhibit 3 that meet the requirements

of section 143.1214(c) to the firefighter's personnel file maintained under section 143.089(a). Based on your representations and our review, we conclude the employee complaints in Exhibits 2, 3, and 4 are subject to section 143.1214 of the Local Government Code and must be withheld under section 552.101 of the Government Code.

Finally, you assert the submitted recording of a department radio communication is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) exempts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if ... release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you explain that the City of Houston established the Office of Inspector General ("OIG") as a central authority to investigate criminal and administrative misconduct of city employees. You state the radio communication pertains to a pending criminal investigation conducted by the OIG. Based on your representations, we conclude that section 552.108(a)(1) is applicable to the radio communication. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the radio communication pursuant to section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the submitted employee complaints under section 552.101 of the Government Code in conjunction with section 143.1214(b) of the Local Government Code. The department may withhold the submitted recording of a department radio communication under section 552.108(a)(1) of the 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](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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/eeg

Ref: ID# 356424

Enc. Submitted documents

c: Requestor  
(w/o enclosures)