



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 7, 2010

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

OR2010-00339

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#366669.

The City of Houston (the "city") received a request for information pertaining to a specified incident, including a specified photograph and jail arrest records. You state you will make the requested jail arrest records available to the requestor. You claim that the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us that some of the requested information is subject to a previous determination issued by this office in Open Records Letter No. 2009-11405 (2009). In that decision, this office ruled the city must withhold information pertaining to a specified complaint under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. You have not indicated there has been any change in the facts, law, and circumstances on which the previous ruling is based. Thus, with regard to the requested information that is identical to the information previously requested and ruled on by this office, we conclude the city must continue to rely on our ruling in Open Records Letter No. 2009-11405 as a previous determination and withhold the information at issue in accordance with that decision. *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 a prior attorney general ruling, ruling is addressed to

same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address the submitted argument for the remaining information not subject to the previous determination.

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 exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with section 143.1214 of the Local Government Code. The city is a civil service city under chapter 143 of the Local Government Code. 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 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 fire fighter'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 the internal affairs investigation record submitted as Exhibit 2 relates to an investigation that did not result in disciplinary action. You inform us this information was obtained from the city police department's files and is maintained for its own use. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(f). You state the requestor is not another law enforcement agency or fire department or the office of a

district or United States attorney. *See id.* § 143.1214(b)(1)-(2). Based on your representations and our review, we conclude Exhibit 2 is excepted from disclosure under section 143.1214 of the Local Government Code and must be withheld under section 552.101 of the Government Code on that basis.

In summary, the city must continue to rely on Open Records Letter No. 2009-11405 as a previous determination and withhold the information that was at issue in the prior ruling in accordance with that ruling. The city must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction 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](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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/cc

Ref: ID#366669

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)