



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2010

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

OR2010-03478

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# 372420 (HPD file no. 16531).

The City of Houston (the "city") received a request for the internal investigation file pertaining to Office of Inspector General (the "OIG") case number 2009-0492. You claim the submitted investigation file is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 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.

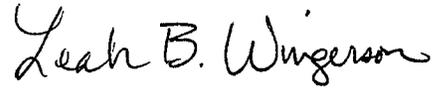
Local Gov't Code § 143.1214(b)-(c). You state the submitted investigation file pertains to an investigation of a city fire fighter conducted by the OIG that did not result in disciplinary action. This office has determined that in those instances where the OIG investigates the alleged misconduct charge, it is the "department" for purposes of section 143.1214. Open Records Decision No. 642 at 4 (1996). You also state this information is maintained by the OIG in its own files and is not part of a fire fighter's civil service personnel file. *See* Local Gov't Code § 143.1214(c); *see also id.* § 143.089(a)-(f). Based on your representations and our review, we conclude the submitted OIG investigation file 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.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 372420

Enc. Submitted documents

c: Requestor
(w/o enclosures)