



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2010

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

OR2010-07530

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# 380298 (PIR 16870).

The Houston Fire Department (the "department") received a request for all case files from the City of Houston's (the "city's") staff services or Office of the Inspector General ("OIG") pertaining to the requestor. You claim that the submitted 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.

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 that other statutes make confidential. You raise section 552.101 in conjunction with 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).¹ You state that the information in Exhibit 2 does not meet the requirements of section 143.1214(c) and that it is not the type of information that would be forwarded to a fire fighter's personnel file maintained under section 143.089(a) of the Local Government Code. Further, we note the information in Exhibit 2 pertains to investigations that did not result in disciplinary action being taken against the firefighters at issue. With respect to Exhibit 3, you state this information relates to closed investigations that resulted in disciplinary action for the fire fighters at issue 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).² Based on your representations and our review, we conclude the employee complaints in Exhibits 2 and 3 are subject to section 143.1214 of the Local Government Code and must be withheld under section 552.101 of the Government Code.

¹You inform us that the city is a civil service city under chapter 143 of the Local Government Code.

²You inform us that the department will direct the requestor to the city's human resources department for further responsive information contained within the civil service files.

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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 380298

Enc. Submitted documents

c: Requestor
(w/o enclosures)