



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2010

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

OR2010-07951

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# 381317.

The Houston Fire Department (the "department") received a request for all information relating to the requestor, including three specified cases. 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.

Initially, we note you have not submitted any information relating to the requestor except for the three requested cases. We assume, to the extent any additional information responsive to the instant request existed when the department received the request for information, you have released it to the requestor. If not, then you must do so at this time. *See* Gov't Code §§ 552.301(a), 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. You state the City of Houston is a civil service city under chapter 143 of the Local Government Code. Section 143.1214 of the Local Government Code provides in relevant 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 information consists of records of internal investigations of alleged misconduct on the part of a fire fighter. The documents in Exhibit 2 indicate the allegation of misconduct in that investigation was not sustained and no disciplinary action was taken. Thus, you state Exhibit 2 is maintained in the department's investigatory files and is not part of the fire fighter's civil service personnel file. *See id.* § 143.1214(c); *see also* Local Gov't Code § 143.089(a)-(g). Further, you state the information does not meet the requirements of section 143.1214(c) for inclusion in the fire fighters' civil service personnel files. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(g). You state the allegations of misconduct in the investigations at issue in Exhibits 3 and 4 were sustained and disciplinary action was taken against the fire fighter. You further state the department has forwarded the documents that meet the requirements of section 143.1214(c) to the fire fighter's personnel file maintained under section 143.089(a). You inform us the requestor is not a representative of another law enforcement agency, a 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 agree the department must withhold Exhibits 2, 3, and 4 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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 381317

Enc. Submitted documents

c: Requestor
(w/o enclosures)