



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2010

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

OR2010-08773

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# 382851.

The Houston Fire Department (the "department") received a request for (1) a specified report; (2) the names, ages, station and assignments, and dates of employment of the two drivers; (3) records of disciplinary actions; and (4) departmental memoranda, advisories, and orders generated as a result of a specified accident. You state you have released some of the requested information. You claim 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 section encompasses information protected by other statutes. 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 is maintained in the department's investigative files and consists of an investigation by the department of alleged misconduct by fire fighters. You state the allegations were sustained and disciplinary action was taken against the fire fighters. You state the department has forwarded the documents meeting the conditions of section 143.1214(c) to the fire fighters' personnel files maintained under section 143.089(a) of the Local Government Code.¹ You state the requestor is not a representative from 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 of the information at issue, we agree the submitted information is generally confidential under section 552.101 in conjunction with section 143.1214 of the Local Government Code.

We note the submitted information includes CR-3 reports completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsections (c) or (e), accident reports are privileged and confidential. However, section 550.065(c)(4) provides for release of accident

¹You note the department will direct the requestor to the City of Houston's Human Resources Department for further responsive information.

reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.² In this instance, the requestor has provided the department with the date of the accident and the specific location of the accident pursuant to section 550.065(c)(4). Accordingly, the submitted CR-3 reports must generally be released pursuant to section 550.065(c)(4).

Therefore, there is a conflict between the confidentiality provision of section 143.1214 of the Local Government Code and the release provision of section 550.065(c)(4) of the Transportation Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, section 143.1214 of the Local Government Code generally pertains to the entire investigatory file created and maintained by the department. However, section 550.065(c)(4) specifically pertains to accident reports completed pursuant to chapter 550 of the Transportation Code. Therefore, we find the release provision of section 550.065(c)(4) of the Transportation Code is more specific than the confidentiality provision of section 143.1214 of the Local Government Code. Further, the confidentiality provision of section 143.1214 was enacted prior to the release provision of section 550.065(c)(4).³ Therefore, we find section 550.065(c)(4) prevails over section 143.1214. Thus, the submitted CR-3 reports, which we have marked, must be released to this requestor pursuant to section 550.065(c)(4) of the Transportation Code. The remaining information must be withheld 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

²See Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

³Act of May 15, 1995, 74th Leg., R.S., ch. 165, § 1, 1995 Tex. Gen. Laws 1025, 1695, *amended by* Act of May 27, 2001, 77th Leg., R.S., ch. 1032, § 5, 2001 Tex. Gen. Laws 2281, 2282-83 (Vernon) (codified as section 550.065(c)(4) of the Transportation Code); Act of May 13, 1993, 73rd Leg., R.S., ch. 220, § 3, 1993 Tex. Gen. Laws 463, 464 (Vernon) (codified as section 143.1214 of the Local Government Code).

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 black ink, appearing to read "Claire Morris Sloan", with a stylized flourish at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 382851

Enc. Submitted documents

c: Requestor
(w/o enclosures)