



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 2, 2010

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

OR2010-11584

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# 389299.

The City of Houston (the "city") received a request for all complaints filed against the requestor and all complaints filed by the requestor over a specified time period. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note, and you acknowledge, the city has failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the information is public and must be released unless a governmental body demonstrates a compelling reason to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

No. 630 (1994). A compelling reason exists when third party interests are at stake or when information is confidential under other law. Because section 552.101 of the Government Code can provide a compelling reason to overcome this presumption, we will consider whether or not the requested information is excepted from disclosure under the Act.

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 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 by the Houston Fire Department (the "department") of alleged misconduct by fire fighters. You state, and the submitted information reflects, that Exhibits 2 and 3 consist of open and active investigations that have not resulted in disciplinary action against any fire fighter involved in these investigations. Additionally, you state Exhibit 5 consists of an investigation of a complaint that was withdrawn. Thus, you

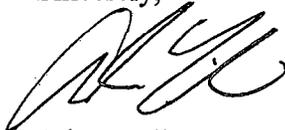
state Exhibits 2, 3, and 5 are maintained in the department's investigatory files and are not part of the fire fighter's civil service personnel file. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(g). Further, you state this information does not meet the requirements of section 143.1214(c) for inclusion in the fire fighters' civil service personnel files. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(g). Based on your representations and our review, we agree the city must withhold Exhibits 2, 3, and 5 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code.

You state the allegation of misconduct in the investigation at issue in Exhibit 4 was 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 civil service personnel file maintained under section 143.089(a). In this instance, the request was received by the city, which has access to the files maintained under section 143.089(a). Therefore, the documents responsive to this request that were forwarded to the fire fighter's civil service personnel file maintained under section 143.089(a) may not be withheld under section 552.101 in conjunction with section 143.1214. *See id.* §§ 143.1214(e), .089(e), (f). Accordingly, as no other arguments against disclosure of this information have been raised, the city must release the documents responsive to this request that the department forwarded to the fire fighter's civil service personnel file maintained under section 143.089(a). However, based on your representations and our review, we agree the city must withhold the remaining information in Exhibit 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](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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/tp

Ref: ID# 389299

Enc. Submitted documents

c: Requestor  
(w/o enclosures)