



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 17, 2012

Ms. Tiffany N. Evans  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2012-00747

Dear Ms. Evans:

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# 442440 (GC No. 19082).

The Houston Fire Department (the "department") received a request for certain daily shift reports, documents showing all sustained internal affairs complaints involving certain employees, and all documents showing calls for service to a specified address during a specified time period. You state the department has no information responsive to a portion of the request.<sup>1</sup> You further state the department will make available to the requestor some responsive information. You claim the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, you acknowledge, and we agree, the department did not comply with section 552.301(d) of the Government Code. In addition, we note the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code

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<sup>1</sup>We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup>Although you raise section 552.108 of the Government Code, you make no arguments to support this exception. Accordingly, we find the department has waived its claim under this exception. *See* Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

in requesting this decision. Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *Id.* § 552.301(b). Under section 552.302 of the Government Code, the submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will address your argument under this section.

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. Section 552.101 encompasses section 143.1214 of the Local Government Code, which provides:

(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).<sup>3</sup> You explain the information submitted as Exhibit 2 pertains to internal investigations into allegations of misconduct by a certain fire fighter. You state some of the information relates to investigations that resulted in disciplinary action against a fire fighter under chapter 143 of the Local Government Code, and the department has forwarded the documents meeting the requirements of section 143.1214(c) to the fire fighter's personnel file maintained under section 143.089(a). *See id.* § 143.089(a)–(f). You state the submitted information is maintained in the department's investigatory files. You further state the requestor is not another law enforcement agency, fire department, or the office of a district or United States attorney. Based on your representations and our review, we conclude the department must withhold the submitted information 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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

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<sup>3</sup>We note the City of Houston is a civil service city under Chapter 143 of the Local Government Code.

Ref: ID# 442440

Enc. Submitted documents

c: Requestor  
(w/o enclosures)