



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2012

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

OR2012-05062

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# 450137 (GC No. 19288).

The Houston Police Department (the "department") received a request for information related to an investigation involving the requestor. 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 information you submitted.

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 other statutes make confidential. You claim 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 the submitted information is a summary of an internal affairs investigation of alleged misconduct by Houston police officers. You explain that because the allegations were not sustained and no disciplinary action was taken, the information at issue does not meet the conditions specified by section 143.1214(c) for inclusion in the officers' personnel files under section 143.089(a) of the Local Government Code. *See id.* § 143.1214(b)(3). There is no indication the information at issue would be subject to the other release provisions of section 143.1214(b). *See id.* § 143.1214(b)(1)-(2). Based on your representations and our review, we therefore 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. *See Open Records Decision No. 642 (1996)* (files relating to investigations of Houston Fire Department personnel by Public Integrity Review Group of Houston Police Department were confidential under Local Gov't Code § 143.1214).

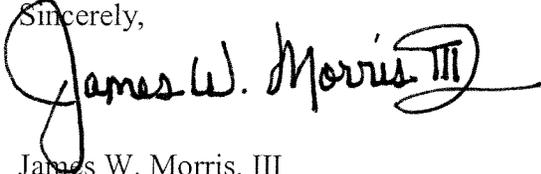
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹You inform us the city is a civil service city under chapter 143 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 that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 450137

Enc: Submitted documents

c: Requestor
(w/o enclosures)