



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2012

Ms. Tiffany Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77002

OR2012-07382

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# 453949 (GC No. 19408).

The Houston Fire Department (the "department") received a request for information pertaining to two specified internal investigations and a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the date the department received the request. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

Next, we note the responsive information consists of investigations completed by the City of Houston's Office of the Inspector General (the "OIG") and are, therefore, subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless the information is made confidential under this chapter or "other law" or is excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). Although you claim these records are subject to

section 552.107(1) of the Government Code, that section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the responsive information may not be withheld under section 552.107(1). However, the attorney-client privilege found in Texas Rule of Evidence 503 is “other law” for the purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001) (addressing applicability of Texas Rule of Evidence 503 to information encompassed by section 552.022). Therefore, we will consider your attorney-client privilege argument under Texas Rule of Evidence 503 for the responsive information. Furthermore, because section 552.101 of the Government Code can make information confidential, we will address the applicability of this exception to the responsive 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. 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).¹ You inform us the responsive information consists of two of the OIG's investigations into allegations of misconduct by a department employee. You further inform us that one of the investigations resulted in sustained findings but no disciplinary action was taken against the named individual. *See* Attorney General Opinion JC-0257 at 5 (2000) (written reprimand is not disciplinary action for purposes of Local Gov't Code chapter 143). You represent the responsive information does not meet the conditions of section 143.1214(c) and is maintained in the department's investigatory files. You also 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 that the responsive information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code.²

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/akg

¹We note the City of Houston is a civil service city under Chapter 143 of the Local Government Code.

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 453949

Enc. Submitted documents

c: Requestor
(w/o enclosures)