



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2012

Ms. Danielle R. Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-14608

Dear Ms. Folsom:

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# 467304 (GC No. 19882).

The Houston Fire Department (the "department") received a request for information pertaining to a specified accident and records related to the "All Hazards Response Program" since January 1, 2011. You state the department is releasing some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-00733 (2012). In Open Records Letter No. 2012-00733, we determined the department, the City of Houston, and the Houston Emergency Center may withhold certain information under sections 552.108(a)(1) and 552.111 of the Government Code; must withhold information subject to section 552.117 of the Government Code if the employee made a timely election under section 552.024 of the Government Code and the cellular telephone number is paid for with personal funds; must withhold a certain e-mail address under section 552.137 of the Government Code; and must release the remaining information at issue. In regards to the information subject to section 552.108(a)(1), you indicate this information is now related to an investigation that has concluded. Thus, the law, facts, and circumstances on which the prior ruling was based for the information subject to section 552.108(a)(1) have changed, and the city may not rely on Open Records Letter No. 2012-00733 as a previous determination for that information. However, we have no indication the law, facts, and circumstances on which the prior ruling was based have

changed for the remaining information at issue. Accordingly, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the department must continue to rely on Open Records Letter No. 2012-00733 as a previous determination and withhold or release the information in accordance with that ruling, with the exception of the information subject to section 552.108(a)(1). To the extent the submitted information is not subject to Open Records Letter No. 2012-00733, or was subject to Open Records Letter No. 2012-00733 but was found to be excepted from disclosure under section 552.108(a)(1), we will address your arguments against disclosure.

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 the following:

(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). We understand the City of Houston is a civil service city under chapter 143 of the Local Government Code. You state Exhibit 5 is part of an internal affairs investigation. You inform us the requestor is not a representative of a law enforcement agency, a fire department, or a district or United States attorney's office authorized to obtain the videos pursuant to section 143.1214(b). *See id.* § 143.1214(b)(1)-(2). We note the information in Exhibit 5 does not fall within the scope of section 143.1214(c). *See id.* § 143.1214(b)(3), (c). Therefore, based on your representations and our review, we conclude the department must withhold Exhibit 5 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).

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which is applicable to certain information related to the provision of emergency medical services ("EMS"). Section 773.091(b) of the Health and Safety Code provides as follows:

Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(b). This confidentiality "does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services." *Id.* § 773.091(g).

Upon review, we find Exhibit 2 constitutes EMS records pursuant to section 773.091. We note, however, records that are confidential under section 773.091 may be disclosed to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information." *Id.* §§ 773.092(e)(4), 773.093. Among the individuals authorized to act on the patient's behalf in providing written consent is a "personal representative" if the patient is deceased. *Id.* Section 773.093 provides a consent for release of EMS records must specify the following: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. You state the requestor has not provided the department with adequate written consent. Thus, with the exception of the information subject to section 773.091(g), which the department must release, the department must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. *See id.* §§ 773.091-773.093.

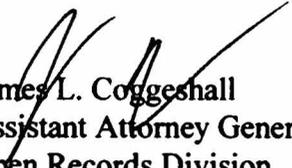
You assert Exhibit 3 is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state Exhibit 3 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree the department may withhold Exhibit 3 under section 552.108(a)(2) of the Government Code.

To conclude, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, the department must continue to rely on Open Records Letter No. 2012-00733 as a previous determination and withhold or release the information in accordance with that ruling, with the exception of the information subject to section 552.108(a)(1) of the Government Code. The department must withhold Exhibit 5 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. With the exception of the information subject to section 773.091(g) of the Health and Safety Code, which the department must release, the department must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. Finally, the department may withhold Exhibit 3 under section 552.108(a)(2) of the 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, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 467304

Enc. Submitted documents

c: Requestor
(w/o enclosures)