



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2014

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

OR2014-07673

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# 522228 (GC No. 21190).

The Houston Fire Department (the "department") received a request for (1) all disciplinary notices, actions, or orders given to department employees over a specified time period; (2) the number of firefighters and civilians employed by the department at the end of specified years; (3) the number of active fires the department responded to over a specified period of time; and (4) a copy of the department's code of administrative procedure. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 143.089 of the Local Government Code. You state the City of Houston is a civil service city under chapter 143 of the Local Government Code. Section 143.089 requires a civil service city to maintain two different types of personnel files

---

<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.

relating to a fire fighter: a fire fighter's civil service file that the civil service director is required to maintain, and an internal file that the fire department may maintain for its own use. Local Gov't Code § 143.089(a), (g). Information that reasonably relates to a fire fighter's employment relationship with the fire department is maintained in a fire department's internal file pursuant to section 143.089(g). This file is confidential and must not be released. See *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied). You indicate the information you have marked Exhibit 2 is maintained in the department's internal personnel files under section 143.089(g). Based on your representation and our review, we find Exhibit 2 is confidential under section 143.089(g) of the Local Government Code. Thus, the department must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses section 143.1214 of the Local Government Code, which provides in relevant 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 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

---

<sup>2</sup>As our ruling is dispositive for this information, we do not address your remaining arguments against its disclosure.

(3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

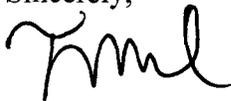
Local Gov't Code § 143.1214(b)-(c). You inform us the information you have marked Exhibits 3, 4, 5, and 6 consists of records of internal investigations of alleged misconduct on the part department firefighters. You state the allegations were sustained and disciplinary action was taken regarding the investigations at issue in Exhibits 3, 4, and 5. You state the investigation at issue in Exhibit 6 was closed as non-jurisdictional. You state all documents meeting the requirements of section 143.1214(c) were forwarded to the appropriate firefighters' personnel files maintained under section 143.089(a) of the Local Government Code. *See id.* § 143.1214(b)(3), (c)(1)-(3). You also inform us this information is maintained in the department's investigatory files and is not part of the firefighters' civil service files. Based on your representations and our review, we conclude Exhibits 3, 4, 5, and 6 are confidential under section 143.1214 of the Local Government Code and the department must withhold them under section 552.101 of the Government Code on that ground.<sup>3</sup>

In summary, the department must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The department must also withhold Exhibits 3, 4, 5, and 6 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

---

<sup>3</sup>As our ruling is dispositive for this information, we do not address your remaining arguments against its disclosure.

Ref: ID# 522228

Enc. Submitted documents

c: Requestor  
(w/o enclosures)