



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2014

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

OR2014-17473

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# 538139 (GC No. 21574).

The Houston Fire Department (the "department") received a request for the disciplinary history of four named department employees. You state the city does not have information responsive to a portion of the request.¹ 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 some of the submitted information is not responsive to the present request because it does not pertain to any of the information requested by the requestor. This ruling does not address the public availability of the non-responsive information, which we have marked, and the department need not release it in response to this request.

Next, we note some of the requested information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2014-03287 (2014), this office ruled the city may withhold the responsive information under rule 503 of the Texas Rules of Evidence. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the city may continue to rely on Open

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Records Letter No. 2014-03287 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the exceptions you raise.

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 143.1214 of the Local Government Code, which provides, in relevant 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 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
- (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 responsive information consists of records of internal investigations of alleged misconduct on the part of department firefighters. You state the allegations were sustained and disciplinary action was taken regarding the investigations at issue in the responsive information. 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 the responsive information is confidential under section 143.1214 of the Local Government Code. Therefore, the department must withhold the responsive information under section 552.101 of the Government Code on that ground.²

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the city may continue to rely on Open Records Letter No. 2014-03287 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. The department must withhold the responsive 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.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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

²As our ruling is dispositive for this information, we do not address your remaining argument against its disclosure.

Ref: ID# 538139

Enc. Submitted documents

c: Requestor
(w/o enclosures)