



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 7, 2007

Ms. Kristy J. Orr  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2007-16161

Dear Ms. Orr:

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# 296645.

The City of Houston (the "city") received a request for "all usage of the website of the University of Houston-Clear Lake, or University of Phoenix on any police department computer since July 1, 2006." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.<sup>2</sup> We have also considered comments submitted by a representative of the requestor.<sup>3</sup> *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we must address the city's obligations under the Act, chapter 552 of the Government Code. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See*

---

<sup>1</sup>Although you also raise section 552.130 of the Government Code, you have provided no arguments explaining how this exception is applicable to the submitted information. Further, the city has not demonstrated that any of the submitted information is confidential for purposes of section 552.130. *See* Gov't Code §§ 552.301, .302.

<sup>2</sup>We note that the submitted information not related to the use of the University of Houston-Clear Lake or the University of Phoenix website is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release that information in response to the request.

<sup>3</sup>Because you have not submitted a copy of the written request for information, we take our description from the requestor's copy of the request.

Gov't Code § 552.301(a), (b). Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You inform us that the city received this request on September 20, 2007. However, as of this date, you have yet to submit a copy of the written request for information. Consequently, you did not meet the fifteen business day deadline and thus failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address your arguments under this exception.

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 that other statutes make confidential. Section 143.1214 of the Local Government Code 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).<sup>4</sup> You state that the submitted information is related to an ongoing investigation of alleged misconduct by the city's police department (the "department") officers that has not resulted in disciplinary action against any specific officer or employee at this time. You further state that this information is maintained by the department in a departmental file and is not part of an officer's civil service personnel file. You explain that the submitted information does not meet all of the conditions of section 143.1214(c) for inclusion in any officer's civil service file. We note, however, that the requestor is not specifically seeking information related to an internal affairs investigation. Rather, he requests information related to police department computer usage. The department may not engraft the confidentiality afforded to records under section 143.1214 to records that exist independently of the internal files. Accordingly, to the extent the submitted information is maintained solely in the department's internal investigative files, it is excepted from disclosure under section 552.101 in conjunction with section 143.1214 of the Local Government Code. However, if the submitted information is also maintained outside the investigative files for other department purposes, it is not confidential under section 143.1214 of the Local Government Code and must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in

---

<sup>4</sup>We understand that the City of Houston is a civil service municipality under chapter 143 of the Local Government Code.

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jordan Johnson  
Assistant Attorney General  
Open Records Division

JJ/jb

Ref: ID# 296645

Enc. Submitted documents

c: Mr. Wayne Dolcefino  
KTRK-TV  
3310 Bissonnet  
Houston, Texas 77005  
(w/o enclosures)

Mr. Townsend Davis  
ABC, Inc.  
77 West 66<sup>th</sup> Street  
New York, New York 10023-6298  
(w/o enclosures)