



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 9, 2009

Ms. Evelyn Njuguna  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2009-04740

Dear Ms. Njuguna:

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# 339648.

The Houston Fire Department (the "department") received two requests for information related to a named employee and a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your assertion that the department is not required to answer factual questions. A governmental body is not required to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request for information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We therefore assume the department has made a good faith effort to locate any information that would be responsive to the requestors' inquiries in the present requests.

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<sup>1</sup>Although you raise section 552.1175 of the Government Code, we note that section 552.117 of the Government Code is the proper exception to claim for information relating to employees of the department.

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 section encompasses information protected by other statutes. The City of Houston (the "city") is a civil service city under chapter 143 of the Local Government Code. Section 143.1214 of the Local Government Code 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.

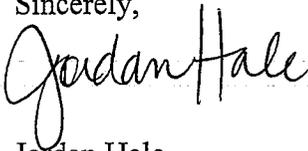
Local Gov't Code § 143.1214(b)-(c). You state that Exhibit 2 consists of an internal investigation by the city's Office of the Inspector General of alleged misconduct by an emergency medical technician employed by the department. Further, you state the requestors do not represent another law enforcement agency, fire department, or the office of a district or United States attorney. You explain the allegations of misconduct were sustained and disciplinary action was taken against the employee under chapter 143 of the Local Government Code. You state the department has forwarded the documents meeting the requirements of section 143.1214(c) to the employee's personnel file maintained under section 143.089(a). Additionally, we understand that Exhibit 2 does not meet all of the

conditions for release of investigatory files in section 143.1214(c). Thus, you indicate Exhibit 2 is maintained in a departmental file and is not part of the civil service personnel file. *See id.* § 143.1214 (c); *see also id.* §143.089(a)-(f). Based on your representations and our review, we conclude Exhibit 2 is subject to section 143.1214 of the Local Government Code and must be withheld under section 552.101 of the Government Code.<sup>2</sup>

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](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 at (512) 475-2497.

Sincerely,



Jordan Hale  
Assistant Attorney General  
Open Records Division

JH/jb

Ref: ID# 339648

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.