



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 16, 2009

Ms. Evelyn W. Njuguna  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2009-17792

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# 364561.

The City of Houston (the "city") received a request for twenty-one categories of information related to personnel matters of the Houston Fire Department from October 1, 2004 until the date of the request. You state that you will release a portion of the responsive information to the requestor. You claim that the remaining requested 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 representative sample of information.<sup>1</sup>

You inform us the information requested in category twenty-one was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-13609 (2009). In that decision, we ruled that, with the exception of employee evaluations, the city must withhold the information maintained in the city firefighters' departmental personnel files under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. You state that the law, facts, and circumstances on which the prior ruling was based have not changed, thus the city must continue to rely on that ruling as a previous determination and withhold or release the same

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<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

information in accordance with the previous determination. *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 the same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will next address the remaining requested information as it is not subject to the previous determination.

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 raise section 552.101 in conjunction with section 143.1214 of the Local Government Code. The city is a civil service city under chapter 143 of the Local Government Code. Section 143.1214 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 sue. 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 the records submitted as Exhibits 2, 3, and 4 relate to investigations by the Office of the Inspector General (the "OIG") of allegations of

criminal and administrative acts of misconduct by city employees that did not result in disciplinary action. You state the records submitted as Exhibits 5 and 6 consist of open and active investigations by the OIG of misconduct and these investigations have not been concluded. You also state this information is maintained by the city in its own files and is not part of the firefighters' civil service personnel files. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(f). Furthermore, you state the requestor is not another law enforcement agency or fire department or the office of a district or United States attorney. *See id.* § 143.1214(b)(1)-(2). Based on your representations and our review, we conclude that the city must withhold the information in Exhibits 2-6 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local 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, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 364561

Enc. Submitted documents

c: 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.