



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 24, 2010

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2010-12882

Dear Ms. De La Garza:

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# 391354.

The City of Houston (the "city") received a request for information pertaining to employees of and investigations conducted by Office of the Inspector General ("OIG") during a specified period of time.¹ You indicate you have released some of the requested information and that some of the requested information does not exist.² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the

¹We note the city sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (where governmental body seeks clarification or narrowing of request for information, ten-day period to request attorney general opinion is measured from the date request is clarified or narrowed).

²We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App. — San Antonio 1978, writ dismissed).

Government Code. We have considered the exceptions you claim and reviewed the submitted information.³

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 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.

³We 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.

Local Gov't Code § 143.1214(b)-(c). You state the records submitted as Exhibits 5, 10, and 13 relate to closed investigations by the OIG of allegations of administrative acts of misconduct by city police officers and fire fighters that did not result in disciplinary action. You also state this information is maintained by the city's police and fire departments in their own files and is not part of the police officers' or firefighters' civil service personnel files. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(f). Further, you state this information does not meet the requirements of section 143.1214(c) for inclusion in the officers' and fire fighters' civil service personnel files. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(g). Based on your representations and our review, we agree the city must withhold Exhibits 5, 10, and 13 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code.

You state the information in Exhibits 6, 7, 8, 9, 11, and 12 is maintained in the fire department's investigative files and consists of completed investigations by the fire department of alleged misconduct by fire fighters. You state the allegations were sustained and disciplinary action was taken against the fire fighters. You state the fire department has forwarded the documents meeting the conditions of section 143.1214(c) to the fire fighters' personnel files maintained under section 143.089(a) of the Local Government Code. In this instance, the request was received by the city, which has access to the files maintained under section 143.089(a). Therefore, the documents responsive to this request that were forwarded to the fire fighters' civil service personnel files maintained under section 143.089(a) may not be withheld under section 552.101 in conjunction with section 143.1214. *See id.* §§ 143.1214(e), .089(e), (f). Accordingly, as no other arguments against disclosure of Exhibits 6, 8, 11, and 12 have been raised, the city must release the documents responsive to this request that the fire department forwarded to the fire fighters' civil service personnel files maintained under section 143.089(a). As you also raise section 552.108 for Exhibits 7 and 9, we will address your argument for the documents in these exhibits that were forwarded to the fire fighters' civil service personnel files maintained under section 143.089(a). However, based on your representations and our review, we agree the city must withhold the remaining information in Exhibits 6, 7, 8, 9, 11, and 12 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code.

Next, you inform us the information in Exhibits 2, 3, and 4 relates to investigations by the OIG of allegations of administrative acts of misconduct by city employees. However, we note that section 143.1214 only applies to police officers and fire fighters as defined by chapter 143. *See id.* § 143.003. Upon review of the information at issue and your arguments, we find that you have failed to demonstrate how section 143.1214 of the Local Government Code applies to employees of the city's Human Resources and Public Works departments. Therefore, Exhibits 2 through 4 may not be withheld under section 552.101 on this basis.

You claim section 552.108(a)(2) of the Government Code for Exhibits 2, 3, 7, and 9. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .302(e)(1)(A). We note the information at issue consists of administrative investigations. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App. — El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). We also note section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision No. 372 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of law enforcement information). You inform us that Exhibits 2, 3, and 7 pertain to criminal cases that concluded in results other than convictions or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to this information. However, Exhibit 9 relates to a criminal investigation and prosecution conducted by the Plano Police Department and Collin County District Attorney's Office. You have not provided our office with any representation to indicate either of these agencies wishes to withhold the information at issue. Therefore, the city may not withhold Exhibit 9 under section 552.108(a)(2) of the Government Code.

Section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). Section 552.108 (c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 at 186-88 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976)(per curiam), and includes a detailed description of the offense. *See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold Exhibits 2, 3, and the remaining information in Exhibit 7 under section 552.108(a)(2).

In summary, the city must withhold the information in Exhibits 5, 10, and 13 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. The city must release the responsive documents from Exhibits 6, 8, 9, 11, and 12 that the fire department forwarded to the fire fighters' civil service personnel files maintained under section 143.089(a) and must withhold the remaining information in Exhibits 6, 7, 8, 9, 11, and 12 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. With the exception of basic information, the department may withhold Exhibits 2, 3, and the remaining information in

Exhibit 7 under section 552.108(a)(2) of the Government Code. The remaining information must be released.

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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 391354

Enc. Submitted documents

cc: Requestor
(w/o enclosures)