



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2010

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

OR2010-16257

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# 398169 (Houston Reference No. 17575).

The City of Houston (the "city") received a request for information related to Office of the Inspector General ("OIG") case numbers 09-708, 09-748, and 2010-00454. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the city did not comply with sections 552.301(b) and 552.301(d) of the Government Code. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d).

The city received the request for information on August 9, 2010. Therefore, the ten-business-day deadline to seek a ruling and state which exceptions apply under section 552.301(b) and provide the specified information to the requestor pursuant to section 552.301(d) was August 23, 2010. The requestor asserts the city's request for opinion,

dated August 23, 2010, did not comply with section 552.301(b) because the city did not state the exceptions that apply. However, we note the city raised sections 552.101 through 552.147 of the Government Code in a letter received by this office on August 23, 2010. Thus, we conclude the city complied with the procedural requirements of section 552.301(b). Next, the requestor states he was not provided with a copy of the city's communications with our office until August 24, 2010. However, the requestor also states the copy of the city's request for an opinion was mailed to him on the ten-business-day deadline. Pursuant to section 552.308, the requirement for notice is met in a timely fashion if the notice is sent to the recipient by first class United States mail properly addressed with postage or handling charges prepaid and it bears a post office cancellation mark indicating a time within that period. *See id.* § 552.308(a)(1). Thus, we conclude the city also complied with the procedural requirements of section 552.301(d). Accordingly, we will address the city's argument against disclosure of the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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.

Local Gov't Code § 143.1214(b)-(c). You indicate the submitted information in Exhibits 2, 3, and 4 pertains to investigations of Houston Fire Department ("HFD") employees conducted by the OIG that did not result in disciplinary action.¹ This office has determined that in those instances where the OIG investigates the alleged misconduct charge, it is the "department" for purposes of section 143.1214. Open Records Decision No. 642 at 4 (1996). You also state this information is maintained by the OIG in its own files and is not part of a fire fighter's civil service personnel file. *See* Local Gov't Code § 143.1214(c); *see also id.* § 143.089(a)-(f). Based on your representations and our review, we conclude the information in Exhibits 2, 3, and 4 must be withheld 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.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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

¹You state the information in Exhibit 2 relates to an investigation of an HFD employee conducted by the OIG that did result in disciplinary action. We note the investigation resulted in a written reprimand. Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. Local Gov't Code §§ 143.051-.055. A written reprimand is not disciplinary action for the purposes of chapter 143 of the Local Government Code. *See* Attorney General Opinion JC-0257. Thus, we conclude the information in Exhibit 2 relates to an investigation that did not result in disciplinary action.

Ref: ID# 398169

Enc. Submitted documents

c: Requestor
(w/o enclosures)