



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2011

Ms. Candice M. Gambrell
Assistant City Attorney
City of Houston
PO Box 368
Houston, Texas 77001-0368

OR2011-12491

Dear Ms. Gambrell:

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# 428213 (GC No. 18658).

The Houston Fire Department (the "department") received a request for faxed and original supervisor's controlled substance forms, a specified investigation report, and the requestor's personnel file. 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.

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, such as section 143.1214 of the Local Government Code, which 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). You inform this office the submitted information consists of the department's investigation of three allegations of misconduct by two department employees. Although you acknowledge two of the allegations resulted in disciplinary action under chapter 143 of the Local Government Code, you also state the department has forwarded documents relating to those allegations to the fire fighters' personnel files maintained under section 143.089(a) of the Local Government Code. *Id.* §§ 143.051-.055 (defining disciplinary action for purposes of chapter 143 to include removal, suspension, demotion, and uncompensated duty); Attorney General Opinion JC-0257 (written reprimand is not disciplinary action for purposes of chapter 143). You represent the submitted information does not meet the conditions of section 143.1214(c) and is maintained in the department's investigatory files. You also state the requestor is not another law enforcement agency, fire department, or the office of a district or United States attorney. Based on your representations and our review of the submitted documents, we conclude that the submitted information is excepted from disclosure 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,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a stylized flourish at the end.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/agn

Ref: ID# 428213

Enc. Submitted documents

c: Requestor
(w/o enclosures)