



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 1, 2014

Ms. Danielle R. Folsom  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2014-07284

Dear Ms. Folsom:

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# 521349 (GC No. 21192).

The City of Houston (the "city") received a request for the personnel file for a named city fire fighter. You state the city will release some information to the requestor. 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 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 143.089 of the Local Government Code. You state the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a fire fighter: one that must be maintained as part of the fire fighter's civil service file and another the fire department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The fire fighter's civil service file must contain certain specified items, including commendations, periodic evaluations by the fire fighter's supervisor, and documents relating to any misconduct in which the department took disciplinary action against the fire fighter under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055.

In cases in which a fire department investigates a fire fighter's misconduct and takes disciplinary action against a fire fighter, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including

background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the fire fighter's civil service file maintained under section 143.089(a). *See Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or are in the possession of the department because of its investigation into a fire fighter's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to a fire fighter's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain a charge of misconduct. *See* Local Gov't Code § 143.089(b). In addition, a document relating to disciplinary action against a fire fighter that has been placed in the fire fighter's personnel file as provided by section 143.089(a)(2) must be removed from the fire fighter's file if the commission finds the disciplinary action was taken without just cause or the charge of misconduct was not supported by sufficient evidence. *See id.* § 143.089(c). Information that reasonably relates to a fire fighter's employment relationship with the fire department and that is maintained in a fire department's internal file pursuant to section 143.089(g) is confidential and must not be released. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us the information in Exhibit 2 relates to disciplinary action taken against the fire fighter at issue. However, you explain the disciplinary action was overturned by a hearing examiner finding the disciplinary action was taken without just cause. Therefore, we understand you to assert this information is properly maintained in the department's internal files as authorized by section 143.089(g). We note the information in Exhibit 2 indicates the fire fighter at issue was reinstated to his position. Based on your representations and our review of the records at issue, we agree some of the information in Exhibit 2, which we have marked, is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.<sup>1</sup>

However, we note the remaining information in Exhibit 2 consists of the hearing examiner's decision regarding the appeal of the disciplinary action made by the fire fighter at issue. Pursuant to section 143.1016 of the Local Government Code, a police officer or fire fighter may elect to appeal disciplinary actions to an independent third party hearing examiner instead of to the commission. *See* Local Gov't Code § 143.1016(a); *see also id.* § 143.010 (commission appeal procedure). The hearing examiner has the same duties and powers as the commission in conducting the appeal. *Id.* § 143.1016(f). Section 143.011 of the Local

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

Government Code provides that “[e]ach rule, opinion, directive, decision, or order issued by the commission must be written and constitutes a public record the commission shall retain on file.” *Id.* § 143.011(c). As the hearing examiner has the same duties and powers as the commission, we find the written decision issued by a hearing examiner also constitutes a public record. *Id.*; *see id.* § 143.057(f); *see also City of Garland v. Byrd*, 97 S.W.3d 601 (Tex. App.—Dallas 2002, pet. denied) (private hearing examiner stands in shoes of civil service commission when rendering decision on discipline); Attorney General Letter Opinion No. 96-018 (1996) (finding hearing examiner appeals must be held in public like commission proceedings because pursuant to section 143.057 hearing examiner has same duties and powers as commission). Thus, the submitted hearing examiner’s decision is subject to section 143.011(c) and is a public record. Although you claim the information at issue is confidential under sections 143.089(g) and 143.1214(a) of the Local Government Code, we find section 143.011 expressly makes appeal decisions issued by the commission public and section 143.1016 assigns the same commission duties to a hearing examiner. Thus, section 143.011 specifically controls the hearing examiner’s appeal record at issue in this ruling, not section 143.089(g) or section 143.1214(a). Therefore, the city must release the submitted final decision of the hearing examiner under section 143.011 of the Local Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must release the remaining information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 521349

Enc. Submitted documents

c: Requestor  
(w/o enclosures)