



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 22, 2016

Ms. Nneka E. Kanu  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2016-08972

Dear Ms. Kanu:

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# 607821 (GC No. 23063).

The Houston Fire Department (the "department") received a request for specified video related to a specified grievance filed by the Houston Professional Fire Fighters Association. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 143.032 of the Local Government Code. Section 143.032 provides, in relevant part,

(a) The [Fire Fighters' and Police Officers' Civil Service Commission] shall adopt rules governing promotions and shall hold promotional examinations to provide eligibility lists for each classification in the fire and police departments. Unless a different procedure is adopted under an alternate promotional system as provided by Section 143.035, the examinations shall be held substantially as prescribed by this section.

(b)(1) Each eligible promotional candidate shall be given an identical examination in the presence of the other eligible promotional candidates[.]

...

(c) The examination must be entirely in writing and may not in any part consist of an oral interview.

...

(h) A person commits an offense if the person knowingly or intentionally:

(1) reveals a part of a promotional examination to an unauthorized person; or

(2) receives from an authorized or unauthorized person a part of a promotional examination for unfair personal gain or advantage.

Local Gov't Code § 143.032(a), (b)(1), (c), (h). Thus, the clear language of section 143.032 makes the department's promotional examination confidential and permits its disclosure only to an authorized person. *Cf.* Open Records Decision No. 584 (1991) (statute making release of information criminal offense deems information confidential by law for purposes of section 552.101). Generally, a promotional examination under chapter 143 must be entirely in writing and may not in any part consist of an oral interview. *See* Local Gov't Code § 143.032(c). We note the submitted information consists of video recordings of an oral examination. Because the examination at issue consists of an oral examination that is not in writing, we find section 143.032 is generally inapplicable to the submitted information.

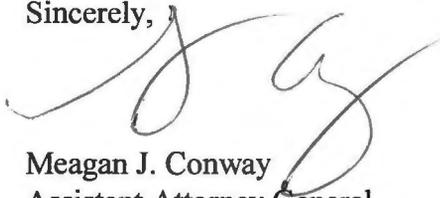
Section 174.006 of the Local Government Code permits the city and a labor association to agree to alter the terms of state civil service provisions in a collective bargaining contract ("CBC"). *See id.* § 174.006(a) (state or local civil service provision prevails over CBC under chapter 174 of Local Government Code unless CBC specifically provides otherwise). You have submitted documentation demonstrating in 2012, pursuant to the court's judgment in *Bazile v. City of Houston*, 858 F. Supp. 2d 718 (S.D. Texas 2012), the City of Houston and the Houston Professional Firefighters' Association altered the terms of section 143.032 in a collective bargaining agreement (the "CBA"). Specifically, the CBA provides the examination for promotion to captain and senior captain shall consist of a written job knowledge examination, a situational judgment examination, and assessment center exercises. *See* CBA § 6(b). The requirement of assessment center exercises as part of a promotional examination was approved by the court in *Bazile*, 858 F. Supp. 2d at 776, which stated an assessment center consists of "multiple exercises simulating job activities that are designed to allow trained observers, or assessors, to make judgments about candidates' behaviors as related to job performance," and may include "role play." *Id.* at 734. The CBA provides assessment center exercises shall be recorded in video format. *See* CBA § (7)(e). Further, the CBA provides, "To the extent that any provision of [the CBA] conflicts with or changes any provision in [chapter 143 of the Local Government Code, including section 143.032, the CBA] shall supersede such provisions, as authorized by [sections] 174.005 and 174.006 of the [Local Government Code]. *Id.* § 12. Therefore, we

agree the CBA, in conjunction with the court's holding in *Bazile*, supersede section 143.032(c) of the Local Government Code, and permit the department's promotional examination to consist, in part, of oral assessment center exercises. Accordingly, upon review, we agree the submitted video recordings of an oral examination are part of a promotional examination that is confidential pursuant to section 143.032 of the Local Government Code. Therefore, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.032 of the Local Government Code.<sup>1</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.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,



Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MJC/akg

Ref: ID# 607821

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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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.