



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2016

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

OR2016-27703

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# 637722 (GC No. 23766).

The City of Houston (the "city") received a request for daily payroll records pertaining to city employees coded "RDWP" or relieved of duty with pay over a specified time period. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.¹ 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).

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 section encompasses information protected by other statutes. The city is a civil service city under chapter 143 of the Local Government Code. Section 143.1214 of the Local Government Code provides in relevant part:

¹We note, and you acknowledge, the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

(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). Although you claim portions of the submitted information pertain to Internal Affairs Division investigations conducted by the Houston Police Department (the "department") and are confidential under section 143.1214, you have not indicated which portions are subject to this provision. You also do not state the submitted information is maintained by the department in an investigatory file created under section 143.1214(b). Additionally, we note the submitted information, which consists of payroll records for various city employees, does not specifically address, or otherwise indicate it relates to misconduct by a fire fighter or police officer. Further, the requestor specifically requested payroll records of city employees, and the city maintains them independently from the personnel files of the police officers and firefighters at issue. The city may not engraft the confidentiality afforded to records under section 143.1214 to records that exist independently of the internal files. Because you have failed to demonstrate any portion of the submitted information is maintained in an investigatory file created under section 143.1214(b) or relates to a charge of misconduct against a fire fighter or police officer, we conclude section 143.1214 is not applicable in this instance, and the submitted information may not be withheld under section 552.101 of the Government Code on that

basis. As you raise no other exceptions to disclosure, the city must release the submitted 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, 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 637722

Enc. Submitted documents

c: Requestor
(w/o enclosures)