



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 18, 1996

The Honorable David Sibley
State Senator
P.O. Box 12068
Austin, Texas 78711-2068

Open Records Decision No. 650

Re: Whether Local Government Code chapter 143 contains a law enforcement investigative exception that allows the release of information from one law enforcement agency to another without the consent of the individual under investigation or the civil-service commission director when an investigation is taking place.
(ORQ-16)

Dear Senator Sibley:

On behalf of the City of DeSoto, you ask the following question:

Is there a law enforcement investigative exception allowing the release of information from one law enforcement agency to another law enforcement agency without the consent of the individual or the director [of the city civil-service commission] when an investigation is taking place?

We are informed that the question relates to a specific situation in which a federal law enforcement agency seeks to obtain a police department personnel file maintained under Local Government Code section 143.089(g).

Chapter 143 of the Local Government Code provides for fire fighters' and police officers' civil-service in certain cities that have voted to adopt the chapter. The chapter assigns various powers to civil-service commissions, one of which is the custodian of personnel files. See Local Gov't Code § 143.089 (a)-(f). The investigative file you inquire about is apparently not in the commission's custody, but rather is maintained by a city police department pursuant to section 143.089(g) of the Local Government Code. Section 143.089(g) reads as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil-service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file." Local Gov't Code § 143.089(g).

In a case involving a newspaper's request for a police department file, the court of appeals determined that subsection (g) expressly forbids the release of files maintained under subsection (g) of section 143.089 and deems that information confidential. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied). The city sought to withhold from disclosure portions of a police department file based on section 552.101 of the Government Code¹ in conjunction with Local Government Code section 143.089(g). The court reasoned that in order to preserve the legislative policy of subsections (a) through (f) of section 143.089² that the civil-service commission director serve as the exclusive authority to make disclosure decisions under the Open Records Act, subsection (g) deems confidential city police department files and directs the department to refer requests to the civil-service director for a decision regarding release of the files he or she keeps. *Id.*

¹Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

²Subsections (a), (b) and (c) of Local Government Code section 143.089 require the civil-service commission director or the director's designee to maintain a personnel file on each fire fighter and police officer and set forth the requisite components of each file so maintained. Subsection (d) requires the director to notify a fire fighter or police officer of the inclusion in the personnel file of a negative letter, memorandum, or other notation of negative impact and gives an affected fire fighter or police officer an opportunity to file a written response to such negative notations. Subsection (e) gives all fire fighters and police officers a right to a copy of all information placed in the person's personnel file. Finally, subsection (f) pertaining to the disclosure of civil-service personnel files provides that "[t]he director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law."

We believe that access to files maintained pursuant to subsection (g) is governed by subsection (g). That provision prohibits the department from releasing "any information contained in the department file to any agency or person." Subsection (g) contains no exception to this prohibition; subsection (g) confers no authority to either the civil-service commission director or the affected fire fighter or police officer to consent to the release of information in the department's files. Nor does the Open Records Act (the "act") contain a provision that could serve to except the information from the prohibition; the act confers no special right of access to subsection (g) information to a law enforcement agency or to any agency.³

We have considered whether the city police department may release the information to a federal law enforcement agency based on the principles of interagency transfers developed in numerous decisions of this office. These decisions are grounded in the well settled policy of the state that state agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989).⁴ The decisions also recognize that a release to a state agency is not a release to the public for purposes of Government Code section 552.007, which prohibits the selective disclosure of information, and Government Code section 552.352, which provides criminal penalties for the release of information considered to be confidential under the act. *See id.*

Generally, information that is excepted from public disclosure under the act may be transferred between state agencies without destroying its confidential character, if the agency to which the information is transferred has the authority to obtain it. *See* Open Records Decision Nos. 516 (1989) (Department of Public Safety transfer to Texas Attorney General's Child Support Enforcement Office authorized by statute), 490 (1988) (Board of Vocational Nurse Examiners transfer to Texas Peer Assistance Program for Impaired Nurses authorized by statute). The principle that information may be transferred without destroying its confidential character does not apply where a statute makes the information confidential and allows the transfer of the information to only certain enumerated entities. *See* Attorney General Opinion JM-590 (1986).

The transfer of information from a state agency to a federal agency requires special consideration. Past attorney general decisions have found that the policy supporting the interagency exchange of information is absent when a federal agency requests information

³Section 552.023 of the Government Code grants a special right of access to a person or a person's authorized representative to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. Thus, the special right of access provided by section 552.023 applies only when the requested information is about the person who is requesting the information. Therefore, section 552.023 does not provide a federal law enforcement agency a special right of access to information made confidential by section 143.089(g).

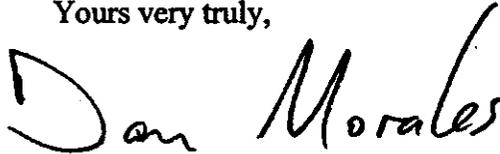
⁴County and municipal governments are recognized as agencies of the state. *See* Attorney General Opinion H-836 (1976) at 4.

that is not required by law to be disclosed to it, since the state cannot effectively insure that the federal agency will maintain the confidentiality of the information. See Attorney General Opinion H-242 (1974) at 4. These decisions have concluded that the state may not release information made confidential by statute, unless some other law requires its disclosure. See Attorney General Opinions H-836 (1974), H-242 (1976). Consequently, absent a federal law requiring the disclosure of information that is confidential pursuant to section 143.089(g) of the Local Government Code, we conclude that a city police department may not disclose such information to a federal law enforcement agency as a permissible interagency transfer.

SUMMARY

Absent federal authority, a city police department must not release to a federal law enforcement agency information made confidential under section 143.089(g) of the Local Government Code. A city police department should refer a request for information in a fire fighter's or police officer's personnel file to the civil-service director or the director's designee.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, slightly slanted style.

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