



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1994

Mr. Hugh W. Davis
Assistant City Attorney
City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102

OR94-832

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 25094.

The City of Fort Worth (the "city") has received a request for information relating to the requestor's complaint against a police officer for assault. Specifically, the requestor seeks "copies of the investigation paperwork of [his] assault complaint against Ft. Worth police officers Lyle and Zavala on or about Oct. 25, 1993." You have submitted the requested records to us for review and indicate that they are maintained in the police department for departmental use. You claim that sections 552.101 and 552.108 of the Government Code except them from required public disclosure.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with section 143.089(g) of the Local Government Code. Section 143.089(g) provides:

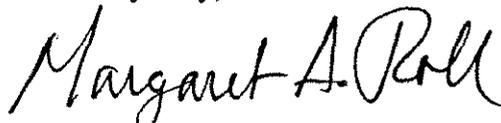
A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director 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.

Recently, in *City of San Antonio v. Texas Attorney General* 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by a city police department for its use. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949.¹

We have examined the information submitted to us for review. We note that the city determined the requestor's complaint to be unfounded. We assume, therefore, that the investigation at issue here did not result in disciplinary action. If this is the case, the city must withhold the requested information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. On the other hand, if the internal affairs investigation did result in disciplinary action, then "any letter, memorandum, or document relating to" the disciplinary action must be transferred to the civil service commission as required by section 143.089(a)(2) of the Local Government Code and must be released by the civil service commission under section 143.089(f) of the Local Government Code. See Open Records Decision No. 562 (1990) at 6. We also note that the city is required to refer any person who requests information maintained in an officer's personnel file to the civil service commission. As we resolve this matter under section 552.101 of the Government Code, we need not address the applicability of section 552.108 at this time.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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¹The *City of San Antonio* court, however, did not comment on the availability of information contained in the police officer's civil service file. In cases in which a police department takes disciplinary action against a police officer, section 143.089(a)(2) requires that the department transfer "any letter, memorandum, or document relating to" the disciplinary action to the city civil service commission. The city civil service commission may not withhold these records under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. Open Records Decision No. 562 (1990); Local Gov't Code § 143.089(f).

Ref.: ID# 25094

Enclosures: Submitted documents

cc: Mr. Chris Barrow
5133 Byers, Apartment # 6
Fort Woth, Texas 76107
(w/o enclosures)