Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1996

Mr. John Steiner
Division Chief
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR96-0113

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37976.

The City of Austin (the "city") received a request for information about the personnel records of five police officers. Specifically, the requestor wants to know whether the five officers "were ever disciplined, suspended from duty, placed on probation, in any way reprimanded, demoted or had any other action taken against them while in the employ of the Austin Police Department." You contend that information contained in the officers' civil service files is excepted from disclosure by section 552.103 of the Government Code. You state that section 143.089(g) of the Local Government Code prohibits release of information from the police department's internal affairs files. You have submitted a representative sample of the requested information for our review[1]. Many of the documents submitted to this office for review, such as performance evaluations and letters of commendation, do not appear responsive to the request for information. We rule here only on the required public disclosure of responsive documents.

[1]We assume that the "representative sample" of information submitted to this office is truly representative of the requested information as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested information to the extent that such information is of a substantially different nature than that submitted to this office.

Section 143.089 contemplates two types of personnel files, an officer's civil service file, and the police department's internal file. Local Gov't Code § 143.089(a), (g). Information contained in internal files maintained by the Austin Police Department is confidential and must not be released.[2] *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied). Information contained in civil service files is subject to release under chapter 552 of the Government Code.

You state that the requestor is apparently seeking both internal files and civil service files. However, it appears that the requestor is seeking only information relating to disciplinary action taken against the officers. Section 143.089(a)(2) mandates that documents relating to "any misconduct by the fire fighter or police officer" must be placed in a police officer's civil service file "if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter." Thus, we assume for purposes of this ruling that all responsive documents are maintained in the civil service files.

Section 552.103(a) excepts from disclosure information relating to litigation to which the city is or may be a party. The city has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the city must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have referenced pending litigation and demonstrated how the requested information relates to that litigation; therefore, you may withhold the information pursuant to section 552.103.

We note that once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982).

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 information at issue under the facts presented to us in this request and is not a previous determination

---

[2]We note that a request for information in the internal file must be referred to the civil service director or his designee. *See City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.-Austin 1993, writ denied).

regarding any other information. If you have questions about this ruling, please contact our office.

Yours very truly,

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 37976

Enclosures: Submitted documents

cc: Mr. Wade Russell
Attorney at Law
404 West 13th Street
Austin, Texas 78701
(w/o enclosures)