



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 17, 1996

Mr. Jay Granberry
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR96-0738

Dear Mr. Granberry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39379.

The Bryan Police Department (the "department") received a request for information from a former employee Michael A. Fabyanic seeking

1. All copies and investigative materials that have been filed against [Michael A. Fabyanic] during my period of employment with the Bryan Police Department.
2. All disciplinary actions and investigative materials that have been filed against me during my period of employment with the Bryan Police Department.
3. All formal and informal reprimands and/or counseling sessions and investigative materials that have been filed against me during my period of employment with the Bryan Police Department.
4. All written comments, observations, judgments, or statements contained in my file that relate directly or indirectly to my performance during my period of employment with the Bryan Police Department.

You state the you have released much of the requested information to the requestor. You claim, however, that witness statements and the investigating officer's summary of those statements is excepted from required public disclosure by section 552.108(b) of the Government Code. You explain that these documents are maintained

not in Officer Fabyanic's civil service personnel file, but within the internal affairs department's investigation files. You have submitted for our review the documents you seek to withhold.

Our review of the submitted material at issue indicates that section 143.089 of the Local Government Code is applicable to the documents. Section 143.089 of the Local Government Code works in conjunction with section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the police department is required to maintain as part of the police officer's civil service file, and one that the police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

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." Since most of the documents submitted to this office are related to alleged misconduct which resulted in disciplinary action, we assume that the documents are part of the officer's civil service file. Section 143.089(e) states that a police officer "is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file." Section 143.089(e) of the Local Government Code thus lays out a system of mandatory access to civil service records. This mandatory access provision for officers prevails over the section 552.108 exception from disclosure. *See* Open Records Decision No. 598 (1991) at 3-4 (provisions of Government Code 552 do not prevail over special rights of access to records).

You indicate, however, that the documents submitted to this office are in the department's internal affairs file. Section 143.089(g) of the Local Government Code allows for the maintenance of a separate departmental file in addition to the civil service file provided for in section 143.089(a)(2). This separate file is for the department's own internal use:

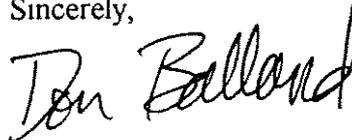
A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter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

A request for information contained within the internal file must be referred to the civil service director or his designee. Local Gov't Code § 143.089(g); *see City of San*

Antonio v. Texas Attorney General, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied). Therefore, if the requested documents were part of the internal affairs file but were transferred to the requestor's civil service file pursuant to the mandatory provision of section 143.089(a)(2), they must be released to the requestor in accordance with the mandatory access provision of section 143.089(e). If, however, any of the requested documents are properly held only within the department's internal file, the request for this information must be referred to the civil service director or his designee

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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 39379

Enclosures: Submitted documents

cc: Mr. Michael A. Fabyanic
509A South Haswell
Bryan, Texas 77801
(w/o enclosures)