



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 23, 1996

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

OR96-0775

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39185.<sup>1</sup>

The City of Fort Worth (the "city") received two open records request for, among other things, a certain city police department's internal affairs investigation file. In your original request for an open records decision, you argued that the requested information was excepted from required public disclosure pursuant to sections 552.101, 552.102, 552.107, 552.108, and 552.111 of the Government Code. You did not, however, submit to our office at that time the information at issue or written comments stating the reasons why the exceptions that you raised would allow the information to be withheld. See Gov't Code § 552.301(b).

Pursuant to section 552.303(c) of the Government Code, on March 27, 1996, our office notified you by letter sent via facsimile that you had failed to submit information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e), *id.*, failure to comply would result in the legal presumption that the requested information is public information.

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<sup>1</sup>You made two separate requests for open records decisions regarding the information at issue. This office has combined your second request, assigned ID# 39954, with your original request.

You did not provide our office with the information that was requested in our March 27, 1996 notice to you until after the seven days had expired. Therefore, as provided by section 552.303(e), the requested information is presumed to be public absent a demonstration that a compelling interest exists for withholding the information. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

Because you have not presented this office with compelling reasons for withholding the internal affairs file pursuant to sections 552.107, 552.108, or 552.111, we deem these exceptions to disclosure as being waived. However, you specifically contend that the internal affairs investigation file constitutes "personnel file records" made confidential under section 143.089 of the Local Government Code and therefore must be withheld from the public pursuant to section 552.101 of the Government Code.<sup>2</sup> The fact that information is confidential by law outside the Open Records Act constitutes a compelling reason for withholding information that overcomes the presumption of openness. Open Records Decision No. 150 (1977). We therefore will address your section 552.101 claim.

Section 143.089 of the Local Government Code provides in pertinent part:

(a) The director [of the police officers' civil service] or the director's designee shall maintain a personnel file on each . . . police officer. The personnel file must contain any letter, memorandum, or document relating to:

\* \* \* \*

(2) any misconduct by the . . . police officer 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.*

\* \* \* \*

(b) *A letter, memorandum, or document relating to alleged misconduct by the . . . police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to sustain the charge of misconduct.*

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<sup>2</sup>Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

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(f) The director or the director's designee may not release any information contained in a . . . police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

(g) A . . . police department may maintain a personnel file on a . . . 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 . . . 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 . . . police officer's personnel file. (Emphasis added.)

It is clearly the intent of section 143.089 that information pertaining to the alleged misconduct of a police officer that either is not sustained or does not result in disciplinary action should not become a part of the officer's public civil service file. *See also City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied). You inform us that in this instance the "final review of the investigative recommendations is still pending in the office of the Chief of Police." Because the citizen's allegations have not yet been sustained, we conclude that, pursuant to section 143.089, the city must withhold the requested internal affairs file 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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Robert W. Schmidt  
Assistant Attorney General  
Open Records Division

RWS/RWP/rho

Ref.: ID# 39185

Enclosures: Submitted documents

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