



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 2, 1996

Mr. Tracy B. Calabrese  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR96-1062

Dear Mr. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40081.

The City of Houston (the "city") received a request for the investigation of the Internal Affairs Division into an allegation of police brutality. You have submitted a copy of the requested information to this office for review and assert that the information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that section 143.089(g) of the Local Government Code excepts from disclosure the internal affairs investigation. Section 143.089 of the Local Government Code contemplates two different types of personnel files for police officers and fire fighters: one that a police or fire department is required to maintain as part of a civil service file, and one that the department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g). You state that the requested information is from the city police department's Internal Affairs Division files, which are kept for the department's own use and are not part of any police officer's civil service file. Therefore, we are considering only those files which may be maintained by the police department for its own internal use under section 143.089(g).

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.

In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. 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. In cases in which a fire or police department takes disciplinary action against a fire fighter or police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the personnel files maintained under section 143.089(a). Such records may not be withheld under section 552.101 of the act. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6.

In the case at hand, you indicate that the investigation is active and that no disciplinary action has resulted. Based on your assertions that the information is maintained by the police department in an internal personnel file and as long as no disciplinary action results from the investigation, the investigation must be withheld from required public disclosure under section 552.101 of the act in conjunction with section 143.089(g) of the Local Government Code.<sup>1</sup> However, if the investigation results in any disciplinary action, then "any record, memorandum, or document relating to" the disciplinary action must be placed in the personnel files maintained by the civil service commission under section 143.089(a) and must be released by the civil service commission under section 143.089(f) of the Local Government Code.<sup>2</sup>

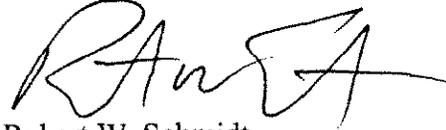
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<sup>1</sup>We also note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

<sup>2</sup>Because we have held that the city may withhold the information under section 552.101, we do not address the other exceptions to disclosure that you raise.

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,

A handwritten signature in black ink, appearing to read 'RWS', with a long horizontal stroke extending to the right.

Robert W. Schmidt  
Assistant Attorney General  
Open Records Division

RWS/rho

Ref.: ID# 40018

Enclosures: Submitted documents

cc: Bobby H. Caldwell  
5400 Bellaire Blvd. Suite E  
Bellaire, Texas 77001  
(w/o enclosures)