



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 16, 1997

Mr. Marcus W. Norris
Assistant City Attorney-Police Legal Adviser
City of Killeen
402 North Second Street
Killeen, Texas 76541-5298

OR97-1132

Dear Mr. Norris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 34164.

The City of Killeen (the "city"), representing the Killeen Police Department, received a request for an internal affairs report concerning the disciplining of two police officers. You assert that the requested information is excepted from disclosure under section 143.089(g) of the Local Government Code as applied through section 552.101 of the Government Code and section 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the information at issue.

We understand that Killeen is a civil service city under Chapter 143 of the Texas Local Government Code. 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). Information contained in a police department's internal files is confidential and must not be released.¹ *City of San Antonio v. Texas Attorney Gen.*, 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.

¹We note that a request for information in the internal file must be referred to the civil service director or his designee. Local Gov't Code § 143.089(g).

You state that “the complaint, officers’ responses, internal affairs report, witness statements, recommendations, and disposition were not placed in the officers’ civil service personnel file, but were placed in a separate personnel file maintained by the Killeen Police Department for its uses” because the discipline assessed was in a form other than those prescribed by chapter 143 of the Local Government Code. The police officers received written reprimands and were required to engage in remedial training.

In *City of San Antonio*, 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. However, in cases in which a police department takes disciplinary action against a police officer, 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.” (Emphasis added.)

Chapter 143 addresses the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055. Accordingly, because the misconduct here did not result in disciplinary action prescribed by chapter 143, any documents relating to the police officers’ misconduct need not be placed in the officers’ civil service files.

Because the documents you submitted to us for review are properly part of the files maintained by the police department under section 143.089(g), the city must withhold the requested information.²

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

²Because our ruling under sections 143.089(g) and 552.101 is dispositive, we need not address the city’s claim under section 552.102.

YHL/rho

Ref.: ID# 34164

Enclosures: Submitted documents

cc: Ms. Michelle L. Benjamin
1100 Willow Springs Road, #1305
Killeen, Texas 76542
(w/o enclosures)

