



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 27, 1997

Mr. Jerry Bruce Cain
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR97-1953

Dear Mr. Cain

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We assigned your request ID# 108075.

The City of Laredo (the "city") received a request for information concerning disciplinary actions against employees of the Laredo Police Department, and for performance evaluations of the former chief of police and of the current chief of police. As to the request for the performance evaluations, you state that the city has already provided the requestor the evaluations of the former chief of police, but that no responsive documents exist concerning the current chief of police.¹ It is thus our understanding that the only documents which need to be addressed in this ruling are those involving disciplinary actions against employees of the police department.

You assert that responsive records concerning disciplinary actions are excepted from disclosure pursuant to section 143.089(g) of the Local Government Code. You also assert that the information at issue is excepted from disclosure by a common-law right of privacy under sections 552.101 and 552.102 of the Government Code. You cite as additional exceptions to disclosure sections 552.108, 552.117, and 552.119 of the Government Code. You submitted samples of responsive documents that you indicate are maintained in the police department's internal files. Please note that when a governmental body submits to this office a "representative sample" of records, we assume that the submitted sample is truly representative of the requested records as a whole. *See* Open Records Decision No. 499

¹We note that the city has an obligation to make a good faith effort to locate requested records. Open Records Decision No. 561 (1990) at 8. However, the city is not obligated to provide information which is not in its possession. Open Records Decision Nos. 452 (1986) at 3 (open records request applies to information in existence when request is received), 362 (1983) at 2 (city does not have to supply information which does not exist).

(1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We will address the applicability of section 143.089 of the Local Government Code to the sample records. Section 143.089 provides for the maintenance of a police civil service file and what may be kept in that file:

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or 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; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

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

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Information that section 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in a police department's internal file, as provided in section 143.089(g):

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.

The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. No such confidentiality provision governs information that is maintained in the civil service personnel files pursuant to section 143.089. Information maintained in the civil service personnel files must generally be released to the public upon request, unless some provision of chapter 552 of the Government Code permits the civil service commission to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 (1990) at 6 (construction of Local Gov't Code § 143.089(f) provision requiring release of information as required by law).

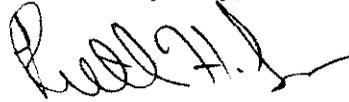
You state that the records submitted to this office are maintained in a section 143.089(g) file kept for internal purposes. We agree that records maintained in a section 143.089(g) file are confidential and may not be disclosed. Please note, however, that the documents submitted to this office contain information concerning what appear to be sustained complaints that resulted in disciplinary actions. If a complaint is (1) sustained and (2) disciplinary action is taken pursuant to chapter 143 of the Local Government Code, then section 143.089(a)(2) provides that information about the misconduct must be maintained in a civil service file. Because information about a sustained complaint that resulted in a chapter 143 disciplinary action *must* be maintained in a section 143.089(a)(2) file and *also may* be maintained in a section 143.089(g) file, we assume that the city might maintain duplicate information about sustained complaints in both the internal, confidential file and the generally public civil service file. We assume the department complied with the procedural requirement of section 143.089(g) by referring the requestor to the civil service director at the time the request was made. You do not argue, and this ruling does not address, whether the civil service file maintained pursuant to section 143.089(a) and (b) is excepted from required public disclosure.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 upon as a previous

²We base this ruling upon our understanding that the records at issue are from the section 143.089(g) file. We note that you raised other exceptions to disclosure and that if your intent was to raise these exceptions to disclosure of the civil service file, you should inform this office.

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 "Ruth H. Soucy", written in a cursive style.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 108075

Enclosures: Submitted documents

cc: Mr. Richard J. Gonzalez
910 Logan Avenue
Laredo, Texas 78040-6202
(w/o enclosures)