



Office of the Attorney General
State of Texas

September 11, 1997

DAN MORALES
ATTORNEY GENERAL

Mr. Kevin W. Kapitan
Assistant City Attorney
Police Legal Advisor
Fort Worth Police Department
350 West Belknap
Fort Worth, Texas 76102

OR97-2034

Dear Mr. Kapitan:

You have asked this office to reconcile our decisions in Open Records Letter Nos. 97-1459 (1997) and 97-1493 (1997) and determine whether the records at issue are subject to required public disclosure under chapter 552 of the Government Code. Your request for a decision was assigned ID# 109041.

In Open Records Letter Nos. 97-1459 (1997) and 97-1493 (1997), the Fort Worth Police Department (the "department") received different requests for personnel information about two named police officers. You informed this office that the records at issue in each request are maintained in the department's internal personnel files that are made confidential pursuant to section 143.089(g) of the Local Government Code. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied). In Open Records Letter No. 97-1459 (1997), we agreed that the records that are maintained in the internal personnel file are confidential. In that ruling, we noted that the ruling did not address the availability of documents maintained in that particular police officer's civil service file.

Open Records Letter No. 97-1493 (1997) concerned records about a different police officer. In that ruling, we agreed that records maintained in the section 143.089(g), internal file are confidential. However, because of the character of some of the specific documents at issue in Open Records Letter No. 97-1493 (1997), we ruled in the alternative that if some records came from the police officer's civil service file rather than the department's internal file, they were subject to release. Section 143.089 provides for the maintenance of a police civil service file and outlines what is required to 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.

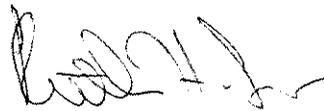
Because it appeared that some of the records came from the civil service file, we addressed the applicability of your other arguments against disclosure to those records. We note that information maintained in a police officer's civil service personnel file must generally be released to the public upon 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).

We have reviewed both Open Records Letter Nos. 97-1459 (1997) and 97-1493 (1997) and the submitted documents. Based upon your assertion that all of the documents at issue in both of the files are maintained in the department's section 143.089(g) file, we agree that the documents are confidential and must be withheld from disclosure. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied).

Please note that in making this decision, we assume that the department may have maintained duplicate information in both the internal, confidential file and in the generally public civil service file. We also assume that the department complied with the procedural requirement of section 143.089(g) by referring the requestors to the civil service director at the time the requests were made. You do not argue, and this ruling does not address, whether the civil service files on these police officers, which are maintained pursuant to section 143.089(a) and (b), are excepted from required public disclosure.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 109041

Enclosures: Submitted documents

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(w/o enclosures)

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