



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 7, 1998

Ms. Elizabeth Dierdorf
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102

OR98-0914

Dear Ms. Dierdorf:

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# 114319.

The City of Fort Worth Fire Department (the "city") received a request for seven categories of information regarding an internal affairs investigation. You state that the city has released to the requestor all of the records at issue, except for a police department internal affairs investigation summary. You claim that the requested investigation summary is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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." You represent that the internal investigation file at issue "is part of a police personnel file maintained pursuant to" section 143.089(g) of the Local Government Code. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the city's police department is required to maintain as part of the police officer's civil service file, and one that the city's police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) reads as follows:

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 [of the civil-service commission] 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.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] 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." Local Gov't Code § 143.089(g). In a case involving a newspaper's request for a police department file, the Third Court of Appeals in Austin determined that subsection (g) expressly forbids the release of files maintained under subsection (g) of section 143.089 to anyone under any circumstances. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 952 (Tex. App.--Austin, 1993, writ denied).

In cases in which a city's police department takes disciplinary action against a police officer, it is required by Local Government Code section 143.089(a)(2) to transfer records relating to the investigation and disciplinary action to the civil service commission. Such records may not be withheld under section 552.101 of the Government Code. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6. You have represented to this office that the internal affairs investigation "did not result in disciplinary action." You also advise us that the police chief sent a copy of the document at issue to the fire chief because the investigation involved both a city police officer and a city firefighter. Assuming that this document is not part of any police officers' or firefighters' civil service personnel file, we conclude that the city must withhold the internal investigation file from disclosure under section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code.

Because we resolve this matter under section 552.101 of the Government Code, we do not address your other claimed exception. 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,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/alg

Ref.: ID# 114319

Enclosures: Submitted documents

cc: Ms. Artie Dawson
Fort Worth Fire and Police
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(w/o enclosures)