



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 2, 1998

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR98-1378

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 115707.

The City of Duncanville received a request for documents relating to the internal affairs investigation of Reserve Police Officer Cecil A. Wood, Jr. You contend that these documents are excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information made confidential by statute. You have raised section 143.089(f) of the Local Government Code which provides as follows:

The [civil service] director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

In Open Records Decision No. 562 (1990), we concluded that section 143.089(f) does not make information contained in personnel files maintained by civil service departments confidential for purposes of the act. *Id.* at 11. In other words, documents contained in files maintained under section 143.089(f) must be released unless they fall within one of the act's exceptions to disclosure.

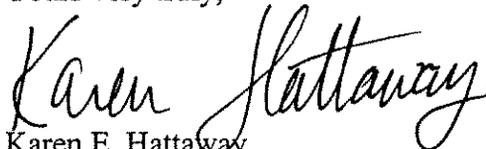
It appears, however, that the documents at issue are confidential under section 143.089(g) of the Local Government Code. Section 143.089 contemplates two different

types of personnel files, a police officer's civil service file that the police department is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a police officer, the police department is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the officer's civil service file maintained under section 143.089(a). Such records are subject to release under chapter 552 of the Government Code. See Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6. However, information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).¹

Section 143.089(b) states that information relating to alleged misconduct by a police officer may not be placed in the officer's civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct. You indicate that Officer Wood was "exonerated" as a result of the internal affairs investigation. You also state that the internal affairs investigation file "is considered and treated as an internal record of the law enforcement agency and is maintained for internal use only." Based upon these representations, it is apparent that the documents at issue are part of the internal file on Officer Woods that the Duncanville Police Department maintains for its own use. Accordingly, we find that the documents are confidential under section 143.089(g) of the Local Government Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code.

Because we are able to resolve this matter under section 552.101, we need not address your other arguments against 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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

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¹We 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.

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Enclosures: Submitted documents

cc: Mr. Robert Macey
4232 Hyde Park
Mesquite, Texas 75150
(w/o enclosures)