



Office of the Attorney General
State of Texas
August 11, 1998

DAN MORALES
ATTORNEY GENERAL

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-1902

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117727.

The City of Houston (the "city") received a request for the following information:

1. Documentation of the accident . . . Captain Herbert Simms was involved in somewhere in the area of or on North Main Street.
2. Copy of the document[s] involving the agreement between Jr. Captain Ronald Barrett and the city of Houston in which Jr. Captain Barrett agreed not to sue or pursue legal action against the city of Houston involving incidents associated with his positive drug test.
3. A copy of the document notifying Jr. Captain Barrett of his positive drug test and the percentage and name of the abused drug.
4. Copy of Jr. Captain Barrett's transfer out of station 45 related to positive drug test results.
5. Copy of any opi[ni]ons filed by any city or outside attorneys concerning this drug test issue with Jr. Capt. Barrett.

You have released information responsive to item 1. You inform us that information responsive to items 3 and 4 was the subject of a prior ruling from this office; therefore, you are withholding such information in accordance with Open Records Letter No. 98-0961 (1998). Furthermore, you explain that no responsive documents exist for item 5. The Open Records Act does not require a governmental body to make available information which does not exist at the time of the request. Open Records Decision No. 362 (1983). As for information responsive to item 2, you assert that the requested information

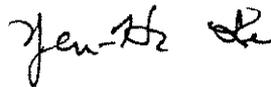
is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. We have considered the exception you claim and have reviewed the information submitted.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 contemplates two different types of personnel files, a firefighter's civil service file that the fire department is required to maintain, and an internal file that the fire department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a fire department takes disciplinary action against a firefighter, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the firefighter'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 fire department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).¹

You state that the submitted personnel file is maintained in the fire department's internal file pursuant to section 143.089(g), and that none of the records are contained in the firefighter's civil service file. We therefore conclude that this information is confidential pursuant to section 143.089(g) of the Local Government Code and may be withheld under section 552.101.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

¹We note that section 143.089(g) requires a fire department that 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.

Ref: ID# 117727

Enclosures: Submitted documents

cc: Mr. David Lee Coe
P.O. Box 488
Franklin, Texas 77856
(w/o enclosures)