



July 12, 1999

Ms. Tracy B. Calabrese  
Senior Assistant City Attorney  
Legal Department  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR99-1927

Dear Ms. Calabrese:

You have asked whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127633.

The City of Houston (the “city”) received a request for “any and all reports relating to the failure of fire and EMS stations to respond to emergency runs, or a delay in their response, due to a failure to receive the microwave alert.” You contend that certain records are excepted from disclosure under chapter 143 of the Local Government Code and have submitted to this office a representative sample of those records. The submitted records concern ongoing investigations that have not resulted in disciplinary action. Please note that this office assumes that the sample of records provided is truly representative of the requested records as a whole, so that this ruling does not address records that contain substantially different types of information. *See* Open Records Decision No. 499 (1988), 497 (1988). We will address your argument that the records are protected from disclosure under section 143.089 of the Local Government Code.

Section 143.089 of the Local Government Code provides for the maintenance of a police or fire department 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 or fire 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.

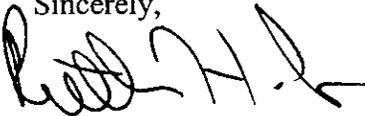
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The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in a fire or police department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file.

You assert that the records at issue are in the fire department's internal file as provided by section 143.089(g). We agree that section 143.089(g) records are confidential and may not be released.

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', written over a horizontal line.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 124838

Encl. Submitted documents

cc: Mr. Dan Lauck, Reporter  
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(w/o enclosures)