



November 2, 1999

Mr. Brinkley L. Oxford  
City Attorney  
City of Edinburg  
P.O. Box 1079  
Edinburg, Texas 78540-1079

OR99-3091

Dear Mr. Oxford:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 129119.

The City of Edinburg (the "city") received two requests for information. One request is for the following:

- 1) All training documents regarding firearms training proficiency submitted to the Texas Commission on Law Enforcement Standards and Education (TCLEOSE) for both regular officers and reserve officers for the last three years; and
- 2) All training documents regarding firearms proficiency to include failing scores for both regular officers and reserve officers for the last three years.

You inform us that the city has no documents responsive to item 1 of this request. You contend that the firearms proficiency scores requested in item 2 are excepted from disclosure under section 552.108 of the Government Code. You did not, however, submit to this office copies of the firearms proficiency scores. Section 552.301(e)(1)(d) requires a governmental body requesting a decision to submit a copy of the information at issue to the attorney general within fifteen business days of receiving the written request for information. Act of

May 25, 1999, 76th Leg., R.S., ch. 1319, § 20, 1999 Tex. Sess. Law Serv. 4500, 4509 (Vernon). The failure to submit a copy of the information to this office results in the presumption that the information is public and must be released. *Id.* Because you did not comply with section 552.301(e), the firearms proficiency scores are presumed to public and must be released.

The other request is for the following:

- 1) All documents regarding the suspension of Officer Victor Javier Rodriguez within the last 3 months;
- 2) Copies of any claims filed on his behalf to workers compensation directly or indirectly related to the suspension(s);
- 3) Copies of any and all checks made payable to Officer Victor Javier Rodriguez directly or indirectly related to the suspension(s); and
- 4) Any and all agreements between Officer Victor Javier Rodriguez and the City of Edinburg for repayment to the City for the workers compensation claim directly or indirectly related to the suspension(s).

You state that you will provide the requestor with the records listed in items 2, 3, and 4 above. You contend, however, that the documents responsive to item 1 of the request are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” The city has adopted chapter 143 of the Local Government Code, and, therefore, the city police department is authorized to maintain internal files on its police officers. Information maintained in the police department’s internal files is confidential, and must not be released. Local Gov’t Code § 143.089(g); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied). However, section 143.089(a) requires the city to maintain separate civil service files on its police officers and to place in those files “any letter, memorandum, or document *relating to* . . . any misconduct by the . . . 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.” Local Gov’t Code § 143.089(a)(2) (emphasis added). Information in the city’s civil service files is subject to required public disclosure unless it is protected by one of the exceptions to disclosure in the act. *See* Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

The documents at issue relate to misconduct that resulted in disciplinary action against Officer Rodriguez. Thus, the city is required to maintain the documents in Officer Rodriguez's civil service file. See Local Gov't Code § 143.089(a)(2). You contend that the city may withhold the documents from disclosure based on section 143.089(f) of the Local Government Code and Officer Rodriguez's objection to their release. Section 143.089(f) provides:

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(a) must be released unless they fall within one of the act's exceptions to disclosure. You have not made any other arguments against the disclosure of the documents relating to Officer Rodriguez's suspension. The city must, therefore, release the documents to the requestor.

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.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref: ID# 129119

Encl. Submitted documents

cc: Mr. Octavio Reyes  
324 Bluebird  
McAllen, Texas 78504  
(w/o enclosures)