



August 8, 2000

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

OR2000-2998

Dear Mr. Hager

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 137877.

The City of DeSoto (the "city"), which you represent, received a request for information relating to an internal fire department investigation. You have submitted the responsive information for our review. You claim that the requested information is excepted from disclosure under Government Code section 552.102, and, alternatively, pursuant to Government Code section 552.101 in conjunction with Local Government Code section 143.089. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Accordingly, section 552.101 encompasses confidentiality provisions such as section 143.089 of the Local Government Code.

Section 143.089 of the Local Government Code sets out rules governing the content and release of two types of personnel files maintained by municipal fire and police departments. The first category is mandatory. "The director or director's designee shall maintain a personnel file on each fire fighter and police officer." Local Gov't Code § 143.089(a). This mandatory file must contain "any letter, memorandum, or document relating to: . . . (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 . . . ." Local Gov't Code § 143.089(a)(2). Release of information contained in this mandatory file is governed by subsections 143.089(e) and (f) which state:

(e) The fire fighter or police officer is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file. . . .

(f) The 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 release of the information is required by law.

Because information contained in this type of file may be released on the basis of other law or the person's consent, this information is not confidential and is, therefore, subject to the Act. See Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

The second type of file described in section 143.089 is discretionary. "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 . . . ." Local Gov't Code § 143.089(g). The information contained in this type of file is confidential. "[T]he 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." *Id*; see also *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

The city has apparently adopted chapter 143 of the Local Government Code, and, therefore, the city fire department is authorized to maintain internal files on its fire fighters. You state that the initial complaint of the internal affairs case was found to be unwarranted. We have reviewed the submitted information and find that the information pertains to an internal affairs investigation in which no disciplinary action resulted. Consequently, the city must withhold the submitted information under section 143.089(g) as encompassed by section 552.101.

In summary, the submitted information must be withheld pursuant to Local Government Code section 143.089(g) as encompassed by Government Code section 552.101. As section 552.101 is dispositive, we need not address your section 552.102 claim.

This letter ruling is limited to the particular records at issue in this request and to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days.

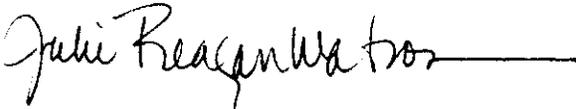
*Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Julie Reagan Watson  
Assistant Attorney General  
Open Records Division

JRW/pr

Ref: ID# 137877

Encl. Submitted documents

cc: Mr. Mark Martin  
312 Harbin  
Waxahachie, Texas 75165  
(w/o enclosures)