



August 29, 2000

Mr. Jerry Bruce Cain
Assistant City Attorney
City Of Laredo
P O Box 579
Laredo, Texas 78042-0579

OR2000-3344

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138437.

The City of Laredo Police Department (the "department") received a request for "the completed form of the [department's] Disciplinary Review Board and the written reprimand of [a named officer] as a result of a recent complaint filed against him involving a DWI investigation." You claim that the requested information is excepted from disclosure under sections 552.102, 552.108, 552.117, and 552.119 of the Government Code and under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the creation of two types of personnel files for police officers: one that is maintained by the city's civil service director and the other by the city police department.

Section 143.089(a) provides for the maintenance of the police officer's civil service file as follows:

- (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 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 [of the civil-service commission] 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.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] 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." Local Gov't Code § 143.089(g); see *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 952 (Tex. App.--Austin 1993, writ denied).

The court in *City of San Antonio* addressed the availability of information that is contained in the 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. *City of San Antonio*, 851 S.W.2d at 946 (in construing section 143.089 the court found general legislative policy that allegations of misconduct against police officers and fire fighters not be subject to compelled disclosure unless they have been substantiated and resulted in disciplinary action). Therefore, "any letter, memorandum, or document relating to" one of the four disciplinary actions listed in subchapter D of chapter 143 must be placed in the personnel files maintained by the civil service commission under section 143.089(a). Local Gov't Code § 143.089(a). Those disciplinary actions are suspension, demotion, uncompensated duty, and dismissal. You state that no civil service director's file is being maintained which contains information responsive to this request because "no disciplinary action has been taken." You also inform us that the information the department seeks to withhold under section 143.089(g) of the Local Government Code is contained in the internal affairs investigative files of the department. You therefore contend that the requested information is made confidential under section 143.089(g) and thus may not be released to the requestor. As to the information contained only in records of the Internal Affairs Division, we concur. The department must withhold the submitted information under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.¹

This letter ruling is limited to the particular records at issue in this request and limited 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.

¹Because we have found that the requested information may be withheld under section 143.089(g) of the Local Government Code, we need not address the applicability of your other asserted exceptions to required disclosure of the requested information.

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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 138437

Encl. Submitted documents

cc: Mr. Robert Garcia - Reporter
Laredo Morning Times
P O Box 2129
Laredo, Texas 78044
(w/o enclosures)