



July 16, 2001

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2001-3075

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149466.

The City of Garland (the "city") received a request for four categories of information.¹ You have released information regarding the first two categories, but claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. We have considered the exception you claim and reviewed the submitted information.

We must first address a procedural matter pertaining to the third category of requested information, a full and complete copy of the fire fighter's personnel file in the custody of the city's fire chief.² You state that "[t]he requestor seeks a copy of the departmental personnel file concerning his client maintained by the Garland Fire Chief," thus identifying the requested information as internal departmental files maintained by the city under section 143.089(g) of the Local Government Code. You also assert a claim of confidentiality for such departmental files. We note, however, that although you did submit for our review

¹The requestor seeks 1) Garland Fire Department administrative directives applicable to a certain fire fighter, including but not limited to certain enumerated directives, 2) civil service commission rules, procedure and regulations applicable to the fire fighter, 3) a full and complete copy of the fire fighter's personnel file in the custody of the city's fire chief, and 4) a full and complete copy of the fire fighter's investigative file regarding the investigation by Lt. K. R. Davis of the city's police department of complaint #01-01 against the fire fighter at the request of the city's fire chief.

²Based upon you representations to this office, it appears that the city has released the information responsive to the first two categories of the request.

an internal affairs investigation file, which we address below and which is apparently responsive to category four of the request, you did not submit for our review any information or representative sample of information responsive to the third category of the request. Pursuant to section 552.301(e), a governmental body is required to submit to this office no later than the fifteenth business day after receiving an open records request, among other information, a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D), (e)(2). To the extent the department believes information responsive to the request for the third category of information is excepted from disclosure, the city was required to comply fully with section 552.301.³ Because you did not submit information responsive to the third category of requested information to this office for review, you did not properly comply with section 552.301.

Section 552.302 of the Government Code provides that if a governmental body does not request an attorney general decision as provided by section 552.301, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. A compelling reason exists where information is made confidential by some other source of law. *See* Open Records Decision Nos. 150 (1977), 26 (1974). We acknowledge your assertion that the information at issue is confidential. However, because you have submitted no information responsive to the third category of the request, we have no basis for finding such information confidential. Therefore, pursuant to section 552.302 of the Government Code, we conclude that any information responsive to the third category of the request must be released. If you believe this information is confidential and cannot lawfully be released, you must challenge this decision in court as outlined below. *See* Gov't Code § 552.352 (providing criminal penalties for the improper release of confidential information). We next address the submitted information.

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. We understand that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 thus contemplates two different types of personnel files for city police officers and fire fighters: one that the civil service director or designee is required to maintain as part of the fire fighter's civil service file, and one that the city's fire department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g). In cases in which a fire department takes disciplinary action against a fire fighter under chapter 143, it is required by section 143.089(a)(2) to place "any letter, memorandum, or document relating to" the investigation and disciplinary action in the fire fighter's civil service file maintained under section 143.089(a). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See id.* §§ 143.051-.055. Such records are subject to the release

³Because you represent to this office that the city fire department maintains an internal personnel file on each fire fighter, we assume the city holds information responsive to category three of the request.

provisions of chapter 552 of the Government Code. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to a fire fighter's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b).

Subsection (g) authorizes but does not require the city fire department to maintain for its use a separate and independent, internal personnel file on a fire fighter. Section 143.089(g) provides:

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.

Information in a personnel file maintained by a fire or police department pursuant to subsection (g) is excepted from disclosure under section 552.101 of the Government Code if the information is reasonably related to the fire fighter's or police officer's employment relationship with the fire or police department. *See City of San Antonio v. San Antonio Express-News*, No.04-99-00848-CV, 2000 WL 1918877 (Tex. App. -- San Antonio, Dec. 20, 2000, no pet. h.); Open Records Decision 562 at 6 (1990).

You have submitted to this office as responsive to the request a copy of an internal affairs investigation. You inform us that the city maintains this information in the city's internal files pursuant to subsection 143.089(g), and you therefore assert that the internal affairs investigation file is confidential under that subsection. After inspecting the submitted information, we conclude that the internal affairs investigation file is reasonably related to the fire fighter's employment relationship with the city: Accordingly, we conclude that the submitted information that is maintained in the department's internal file under subsection (g) must be withheld from disclosure under section 552.101.

However, as noted above, section 143.089 also provides in relevant part that the subsection (a) civil service file *must contain any letter, memorandum, or document relating to any misconduct by the fire fighter 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 chapter 143.* Furthermore, information in a section 143.089(a) civil service file is not confidential under section 143.089(g). Local Gov't Code § 143.089(f); *see City of San Antonio vs. San Antonio Express News*, No.04-99-00848-CV, 2000 WL 1918877 at *4 (Tex. App. -- San Antonio, Dec. 20, 2000, no pet. h.) (subsection (g) does not automatically exempt any and all documents contained in (g) files from disclosure under the Texas Public Information Act); Open Records Decision No. 562 at 6 (1990). Based on your representations and an inspection of the submitted documents,

we conclude that the internal affairs investigation file comprises documents from an employing department relating to misconduct by a fire fighter which resulted in disciplinary action by the employing department in accordance with chapter 143 of the Local Government Code. Thus, pursuant to section 143.089(a)(2), a copy of the submitted documents must also be placed in the civil service personnel file maintained under section 143.089(a). Further, such copy is not confidential under section 143.089(g) and may not be withheld on that basis.

We note, however, that a cassette tape is associated with the submitted documents as an attachment. Because this tape is not a "letter, memorandum, or document relating to" the misconduct for which the fire fighter was disciplined, we conclude that it is not required to be placed in the civil service personnel file. *See* Local Gov't Code § 143.089(a)(2). As noted above, the cassette tape must be withheld under section 552.101.

In summary, the information that is responsive to the request and that was not submitted to this office for review must be released pursuant to section 552.302 of the Government Code. The submitted information must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, except for the submitted cassette tape recording, a copy of the submitted information must be placed in the civil service file maintained pursuant to section 143.089(a) of the Local Government Code, and such copy is not confidential under section 143.089(g) and may not be withheld on that basis.

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.

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

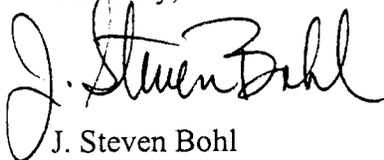
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 149466

Enc: Submitted documents

c: Mr. Ronnie D. Wilson
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Richardson, Texas 75080
(w/o enclosures)