OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 9, 2001

Ms. Karmen Binka
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2001-4555

Dear Ms. Binka:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153096.

The City of San Antonio (the "city") received a request for information relating to relating to a named police officer, including records regarding training and testing and duty and discipline.[1] You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.119, and 552.122 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. Section 143.089 of the Local Government Code contemplates the existence of two different types of personnel files, including one that must be maintained as part of a police officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g).[2] The civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension,

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[1]We note that the requestor also submitted an affidavit that he asks the city to execute. The city has no obligation to do so under chapter 552 of the Government Code. *See* Gov't Code §§ 552.221, .228; Open Records Decision No. 664 (2000).

[2]We understand that the city is a civil service municipality under chapter 143 of the Local Government Code.

demotion, and uncompensated duty. *Id.* §§ 143.051-.055. Documents relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See id.* § 143.089(b)-(c).

Subsection (g) of section 143.089 authorizes but does not require the police department to maintain for its use a separate and independent internal personnel file relating to a police officer. Section 143.089(g) provides as follows:

> 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.

Id. § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *See City of San Antonio*, 851 S.W.2d at 949 (concluding that "the legislature intended to deem confidential the information maintained by the . . . police department for its own use under subsection (g)"). The court stated that the provisions of section 143.089 governing the content of the civil service file reflect "a legislative policy against disclosure of unsubstantiated claims of misconduct made against police officers and fire fighters, except with an individual's written consent." *Id.*

Thus, if a police department takes disciplinary action against a police officer under chapter 143 of the Local Government Code, section 143.089(a)(2) requires that records relating to the investigation and disciplinary action be placed in the personnel files maintained under section 143.089(a). The records encompassed by section 143.089(a) are subject to public disclosure under chapter 552 of the Government Code, unless an exception to disclosure is shown to apply. *See* Local Gov't Code § 143.089(f); *City of San Antonio*, 851 S.W.2d at 948-49; Open Records Decision No. 562 at 6 (1990). Section 143.089(g) provides that a department that receives a request for information relating to a police officer "may not release any information contained in the department file" maintained under section 143.089(g) and must "refer to the director [of the civil service commission] a person or agency that requests information that is maintained in the . . . police officer's personnel file."

You inform this office that the city maintains *three* files on each police officer:

> (1) a Fire and Police Civil Service Commission file, as required by [Local] Government Code section 143.089(a); (2) an internal personnel file maintained by the police department, as permitted by [Local] Government Code section 143.089(g); *and* (3) a personnel file maintained by the City's Department of Human Resources. [Emphasis added.]

You state that the city "understands that information contained in the Fire and Police Civil Service Commission file is generally subject to viewing by the public" and "that information in the police department's personnel file is statutorily confidential and shall not be released" pursuant to section 143.089(g). You also state that "[i]n many cases, the information in the Human Resource[s] personnel file on an officer is a combination of information contained in the police department's personnel file and the Fire and Police Civil Service Commission's personnel file."

We find that this practice is contrary to the purpose and legislative intent of section 143.089. Section 143.089 contemplates the existence of only two personnel files concerning a particular police officer. Documents relating to commendations, periodic evaluations by the officer's supervisor, and misconduct that resulted in disciplinary action against the officer under chapter 143 of the Local Government Code must be held in the civil service file and are subject to public disclosure under chapter 552 of the Government Code. *See* Local Gov't Code § 143.089(a)(1)-(2). Documents that relate to unsustained allegations of misconduct or disciplinary action taken without just cause must be held in the police department's confidential section 143.089(g) file. The maintenance of a third file, the contents of which are subject to public disclosure under chapter 552 of the Government Code, is contrary to the city's election to be governed by chapter 143 of the Local Government Code and to the legislative purpose of section 143.089. *See also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App. – San Antonio 2000, no pet. h.) (restricting confidentiality under section 143.089(g) to "information reasonably related to a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files).

In this instance, you inform this office that "the City does not possess any Firefighter's and Police Officer's Civil Service Commission documents regarding" the police officer in question. You request our decision with regard to the documents submitted as Attachments II, III, and IV. You state that "Attachments II -- IV consist of all remaining documents in the 201 personnel file for the referenced police officer." Inasmuch as you state that no responsive information is held in the civil service commission file, we assume that all of the information in Attachments II, III, and IV is held in the police department's personnel file. Therefore, this information is confidential under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.[3] To the extent, however, that the police department's personnel file held any information that is not

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[3]As section 552.101 is determinative, we need not address sections 552.102, 552.117, 552.119, or 552.122.

contained in Attachments II, III, or IV when the city received this request for information, that information must be released. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).

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).

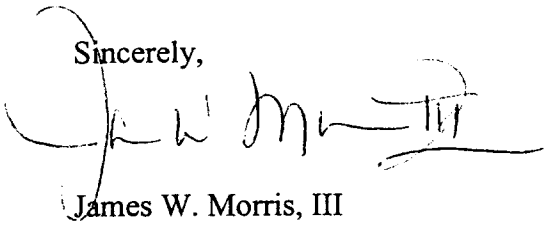
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dept. 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 153096

Enc: Submitted documents

c: Mr. Philip Bozzo, Jr.
405 S. Presa
San Antonio, Texas 78205
(w/o enclosures)