



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2003

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

OR2003-8129

Dear Mr. Mann:

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# 191225.

The City of Garland (the "City") received a request for access to and copies of written complaints filed against any City police officer during the month of July 2003. You assert the submitted information is excepted from disclosure under section 552.101 of the Government Code. We reviewed the information you submitted and considered the exception you claim.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. *See* Gov't Code § 552.101. We understand that the City is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: 1) a police officer's civil service file that the civil service director must maintain and 2) an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the officer's civil service file maintained under section 143.089(a). *Abbott v. Corpus*

Christi, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or in possession of the department because of its investigation into a police officer’s misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* at 120, 122. The types of disciplinary records that must be maintained in the civil service file include those records that relate to removal, suspension, demotion, or uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055. Such records are subject to release under chapter 552 of the Government Code. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an officer’s alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. *See id.* § 143.089(b). Information that reasonably relates to an officer’s employment relationship with the police department and that is maintained in a police department’s internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state, and provide a supporting affidavit explaining, that the Garland Police Department (the “Department”) maintains internal affairs files in accordance with section 143.089(g) of the Local Government Code. You advise us that most of the investigations of complaints received in July 2003 have been concluded and that these complaints were not sustained and did not result in any disciplinary action. You explain that four complaints are classified as pending internal affairs investigations and the results of these investigations are unknown at this time. As a result, you indicate that the Department maintains the responsive information in its departmental files. Further, you inform us that the civil service director does not maintain any responsive documents in the civil service files. Based on your representations and our review of the submitted information, we conclude the submitted complaints are confidential pursuant to section 143.089(g) of the Local Government Code. Accordingly, the City must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/seg

Ref: ID# 191225

Enc: Submitted documents

c: Mr. Frederick Hal Slice
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Dallas, Texas 75044
(w/o enclosures)