



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2007

Mr. Mark G. Daniel
Evans, Gandy, Daniel & Moore
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2007-00064

Dear Mr. Daniel:

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# 268255.

The City of Watauga (the "city"), which you represent, received a request for a particular decision by a hearing examiner and a particular suspension letter. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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." Gov't Code § 552.101. This section encompasses information protected by other statutes such as section 143.089 of the Local Government Code. You state 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, a police officer's civil service file that the civil service director is required to maintain under section 143.089(a), and an internal file that the police department may maintain for its own use under section 143.089(g). *See* Local Gov't Code § 143.089(a), (g).

The civil service file that is required to be maintained under section 143.089(a) of the Local Government Code 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.

Id. § 143.089(a). Information that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *Id.* § 143.089(g); *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the information in the October 17, 2006 suspension letter relates to a preliminary investigation that resulted in the suspension of a particular officer, but that the investigation of misconduct is still pending. You assert that because the investigation is pending, this record may not be placed in the officer's civil service file under section 143.089(a). We note, however, that an officer's civil service file must contain documents relating to any misconduct in those cases where the police department took disciplinary action against the officer. *See id.* § 143.089(a)(2); *see also id.* §§ 143.051-.052 (suspension is "disciplinary action" for purposes of section 143.089(a)(2)). In this instance, the city police department suspended the officer for the alleged misconduct. Therefore, the October 17, 2006 suspension letter must be placed in the officer's civil service file and released to the requestor.

Section 143.089(c) states that a document relating to disciplinary action against an officer or alleged misconduct must be removed from the officer's civil service file if it is found that the disciplinary action was taken without just cause. *Id.* § 143.089(c). In this instance, the decision from a hearing examiner overturns a prior disciplinary action. Accordingly, we find that this document must be removed from the officer's civil service file and must be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

In summary, the city must withhold the decision from the hearing examiner under section 552.101 in conjunction with section 143.089(g). You must release the remaining information.

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).

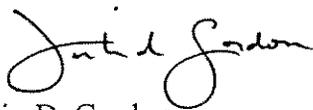
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 268255

Enc. Submitted documents

c: Mr. Richard W. Carter
904 Collier Street
Fort Worth, Texas 76102
(w/o enclosures)