



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 3, 2008

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2008-00064

Dear Mr. Weir:

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# 298506.

The San Antonio Fire Department (the "department") received a request from the City of Garland Fire Department for employment information pertaining to a named individual. You claim that the requested 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.

Initially, we note that some of the submitted information, which we have marked, is not responsive to the instant request. The department need not release nonresponsive information in response to this request and this ruling will not address that 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." Govt. Code § 552.101. This section encompasses information protected by other statutes. We understand that the City of San Antonio is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides in pertinent part:

- (a) The director [of the fire fighters' or police officers' civil service] 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:

...

(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 . . . .

...

(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 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 Govt. Code § 143.089(a), (g). Thus, section 143.089 of the Local Government Code provides for the creation of two personnel files for police officers and fire fighters: one that must be maintained by the city's civil service director or his designee and another that may be maintained by the city's fire or police department. In cases in which a police or fire department investigates a police officer or fire fighter's misconduct and takes disciplinary action against the individual, the department 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 police officer or fire fighter's civil service file maintained under section 143.089(a).<sup>1</sup> *Abbott v. City of 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 or fire fighter's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Information contained in the civil service file generally must be released, unless it is shown that some provision of the Act permits the information to be withheld from public disclosure. *See id.* § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 at 6 (1990).

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<sup>1</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See id.* §§ 143.051-.055.

However, a document relating to a police officer or 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). Information that reasonably relates to a police officer or fire fighter's employment relationship with the department and that is maintained in a 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 that the submitted information is maintained in the department's personnel file pursuant to section 143.089(g) of the Local Government Code. Some of this information, however, relates to the charge of misconduct that resulted in the removal of the firefighter at issue. Therefore, this information is subject to section 143.089(a)(2).<sup>2</sup> Consequently, if you have not done so already, this information must also be placed in the firefighter's civil service file. However, we agree that the submitted information is confidential under section 143.089(g) of the Local Government Code and must be withheld from disclosure under section 552.101 of the 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

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<sup>2</sup>We note that section 143.089(g) requires a fire department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee. You state that you will forward the request to the civil service commission.

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 challenge 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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 298506

Enc. Submitted documents

c: Ms. Joelen Geurian  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002  
(w/o enclosures)