



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2008

Ms. Julia Gannaway  
Lynn Pham & Ross, LLP  
306 West Broadway Avenue  
Fort Worth, Texas 76104

OR2008-08067

Dear Ms. Gannaway:

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# 312892.

The City of Taylor (the "city"), which you represent, received a request for (1) all documents contained in a named firefighter's employment file; (2) a taped conversation involving the named firefighter that occurred on a particular date; and (3) information related to a specified investigation. 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, a portion of which includes a representative sample of information.<sup>1</sup>

You claim that the submitted information is excepted from disclosure under section 143.089 of the Local Government Code. Section 552.101 of the Government Code excepts from

---

<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information that is made confidential by statute. Gov’t Code § 552.101. Section 552.101 encompasses section 143.089, which contemplates two different types of personnel files, a police officer’s or a fire fighter’s civil service file that a city’s civil service director is required to maintain, and an internal file that the police department or the fire department may maintain for its own use. Local Gov’t Code § 143.089(a), (g). We understand that the city is a civil service city under chapter 143 of the Local Government Code.

In cases in which a police department or a fire department (the “department”) investigates an officer’s or a fire fighter’s misconduct and takes disciplinary action against the employee, 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 employee’s civil service file maintained under section 143.089(a).<sup>2</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 an officer’s or a fire fighter’s misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file.<sup>3</sup> *Id.* 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 or 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). Information that reasonably relates to an officer’s or a 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. Tex. Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted information relates to on-going internal administrative investigations which have not yet resulted in disciplinary action. You explain that the submitted information is contained in the department’s personnel files for the fire fighter at

---

<sup>2</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143.

<sup>3</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 inform us that the city has referred the requestor to the civil service commission, as provided by section 143.089(g).

issue and that this information is maintained under section 143.089(g). Based on your representations and our review, we conclude that the submitted information must be withheld from the requestor 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 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 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).

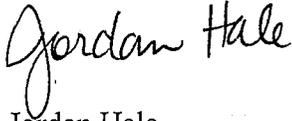
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Jordan Hale  
Assistant Attorney General  
Open Records Division

JH/jb

Ref: ID# 312892

Enc. Submitted documents

c: Mr. Dominic Audino  
The Law Offices of Dominic Audino  
Arboretum Plaza One  
9442 North Capital of Texas Highway, Suite 500  
Austin, Texas 78759  
(w/o enclosures)

---