



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2009

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-01196

Dear Mr. Bounds:

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# 333464.

The City of Corpus Christi (the "city") received a request for a transcript pertaining to a specified arbitration hearing involving a named individual. Although you indicate that a written transcript does not yet exist,¹ you claim that the submitted audio recording of the specified arbitration hearing is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

²We note that in your letter dated December 2, 2008, you have withdrawn your remaining assertions under the Act.

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, and an internal file that the police department may maintain for its own use. *See* 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,³ it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and subsequent disciplinary action in the police officer's civil service file maintained under section 143.089(a), which is generally subject to public release. *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). However, section 143.089(c) states that a document relating to alleged misconduct or disciplinary action against an officer must be removed from the officer's civil service file if it is found that the disciplinary action was taken without just cause. *See* Local Gov't Code § 143.089(c). Information removed from the civil service file may then be placed in a police department's internal file maintained pursuant to section 143.089(g). This information is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

In this instance, you inform us that the submitted audio recording pertains to an investigation into a police officer's alleged misconduct that originally resulted in disciplinary action against the officer in question. You explain that this recording documents an arbitration hearing that overturned this disciplinary action. Accordingly, you state that the submitted recording must be removed from the officer's civil service file and placed in the city police department's internal personnel file, which is maintained under section 143.089(g). Based on your representations, we agree that the recording at issue is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

³Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Reg Hargrove". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 333464

Enc. Submitted documents

c: Requestor
(w/o enclosures)