



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 25, 2009

Ms. Cary Grace  
Assistant City Attorney  
City of Austin, Law Department  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2009-11952

Dear Ms. Grace:

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# 354549.

The Austin Police Department (the "department") received a request for video from a specific traffic stop. 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. Section 552.101 encompasses section 143.089 of the Local Government Code. You state that the department is a civil service organization 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 alleged misconduct by a police officer and takes disciplinary action against the police officer, it is required by section 143.089(a)(2) of the Local Government Code 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's civil service file maintained

pursuant to section 143.089(a). *See 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’s misconduct, and the department must forward them to the civil service commission for placement in the civil service file for the disciplined police officer. *See id.* Chapter 143 of the Local Government Code prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055. Such records are subject to release under the Act. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to alleged misconduct by a police officer may not be placed in that officer’s 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’s employment relationship with the police department and that is maintained in the police department’s internal file pursuant to section 143.089(g) is confidential and must not be released.<sup>1</sup> *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *see also City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted information relates to an ongoing investigation of alleged misconduct by multiple department officers. You inform us that this investigation has not resulted in disciplinary action, as defined in chapter 143, against any of the involved officers. You further inform us that the submitted information exists only within the department’s Internal Affairs Division’s administrative investigation file, and is being retained by the department “for the sole purpose of aiding its internal investigation into the alleged misconduct by the officers[.]” Based on your representations and our review, we conclude that the submitted information is confidential under section 143.089(g) of the Local Government Code. Therefore, the department must withhold this information pursuant to section 552.101 of the Government Code.

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.

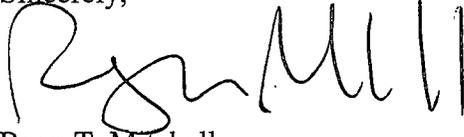
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free,

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<sup>1</sup>Section 143.089(g) requires a police 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.

at (877) 673-6839. Questions concerning the allowable charges for providing public 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 "Ryan Mitchell". The signature is written in a cursive style with a large initial "R" and "M".

Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/rl

Ref: ID# 354549

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)