



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2010

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

OR2010-00705

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# 367241 (SAPD File No. 2009-4605).

The San Antonio Police Department (the "department") received a request for employment information pertaining to a named police officer. 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 the submitted information contains accident report forms that were completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. *Id.* § 550.064(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.¹ *Id.* In this case, the requestor has not provided the information specified by the statute. Accordingly, the submitted accident report forms must be withheld pursuant to section 550.065(b).

¹Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

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. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code.² Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that a city's civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g).

The police officer's civil service file must contain specific items, including commendations, periodic evaluations by the officer's supervisor, and documents from the employing department relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *See id.* § 143.089(a)(1)-(2). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, 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 police officer's civil service file maintained under section 143.089(a).³ *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 personnel file. *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 a police officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. *Id.* § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the police department and that is maintained in a police 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 the remaining information is maintained in the department's internal file regarding this officer. However, we note some of the submitted information pertains to internal administrative investigations of the officer for misconduct that resulted in disciplinary action

²We understand that the City of San Antonio is a civil service municipality under chapter 143 of the Local Government Code.

³Chapter 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.

under chapter 143. 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* Local Gov't Code § 143.089(a)(2); *see also id.* §§ 143.051-.052 (suspension and uncompensated duty are "disciplinary action [s]" for purposes of section 143.089(a)(2)). We also note some of the information at issue consists of commendations and periodic evaluations of the officer named in the request. Therefore, this information is subject to sections 143.089(a)(1) and (3), and must also be maintained in the officer's civil service file under section 143.089(a). You state the request has been forwarded to the San Antonio Fire Fighter and Police Officers Civil Service Commission.⁴ Therefore, we agree the remaining information maintained in the department's internal file 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.

In summary, the department must withhold the submitted accident report forms pursuant to section 550.065(b) of the Transportation Code. The remaining 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 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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

⁴Section 143.089(g) requires a police or 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.

Ref: ID# 367241

Enc. Submitted documents

cc: Requestor
(w/o enclosures)