



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2010

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O.Box 839966
San Antonio, Texas 78283-3966

OR2010-07565

Dear Ms. Valkavich:

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#380703 (COSA File No. 10-0323).

The City of San Antonio (the "city") received two requests from the same requestor for the employment record of a named firefighter, investigations surrounding this firefighter, a list of all firefighters who retired in the same year this firefighter was promoted, and a list of crew members with whom this firefighter has worked. You state you will release some of the information responsive to the request. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 the city is a civil service city under chapter 143 of the Local Government

¹Although you assert that the submitted information is also excepted under sections 552.102, 552.117, 552.136, and 552.137 of the Government Code, you do not provide arguments explaining the applicability of these sections to the information at issue; therefore, we assume that the city is no longer asserting these sections. See Gov't Code § 552.301(e)(1)(A) (governmental body must explain applicability of raised exception).

Code. Section 143.089 provides for the existence of two different types of personnel files relating to a fire fighter: one that must be maintained as part of the fire fighter's civil service file and another the fire department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The fire fighter's civil service file must contain certain specified items, including commendations, periodic evaluations by the fire fighter's supervisor, and documents relating to any misconduct in which the department took disciplinary action against the fire fighter under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055.

In cases in which a fire department investigates a fire fighter's misconduct and takes disciplinary action against a fire fighter, 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 fire fighter's civil service file maintained under section 143.089(a). *See Abbott v. 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 are in the possession of the fire department because of its investigation into a fire fighter's misconduct, and the fire department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to a fire fighter's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain a charge of misconduct. *See* Local Gov't Code § 143.089(b). In addition, a document relating to disciplinary action against a fire fighter that has been placed in the fire fighter's personnel file as provided by section 143.089(a)(2) must be removed from the fire fighter's file if the commission finds that the disciplinary action was taken without just cause or the charge of misconduct was not supported by sufficient evidence. *See id.* § 143.089(c). Information that reasonably relates to a fire fighter's employment relationship with the fire department and that is maintained in a fire department's internal file pursuant to section 143.089(g) is confidential and must not be released. *See 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 inform us the information at issue consists of a city fire department's internal file for the named firefighter. We note that the submitted information includes a commendation for the firefighter, which is subject to section 143.089(a)(1). Consequently, if you have not done so already, this information must also be placed in the firefighter's civil service file. Thus, the commendation may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, based on

your representations and our review, we agree that 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.²

In summary, with the exception of the submitted commendation, the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 143.089 of the Local 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#380703

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note that section 143.089(g) of the Local Government Code 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.