



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2010

Mr. Ricardo J. Navarro
Mr. Alan T. Ozuna
Denton, Navarro, Rocha & Bernal
701 East Harrison, Suite 100
Harlingen, Texas 78550-9151

OR2010-07728

Dear Mr. Navarro and Mr. Ozuna:

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# 380951.

The Pharr Police Department (the "department"), which you represent, received a request for the police report, probable cause affidavit, and personnel disciplinary records pertaining to the arrest, criminal investigation, and internal affairs investigation of a named police officer. 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 City of Pharr 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 a city's civil service director is required to maintain, and an internal file that the department may maintain for its own use. Local Gov't Code § 143.089(a), (g). The officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in which the department took disciplinary action against the officer 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; *see* Attorney General Opinion JC-0257 (written reprimand is not disciplinary action for purposes of Local Gov't Code chapter 143). 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). *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 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 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).

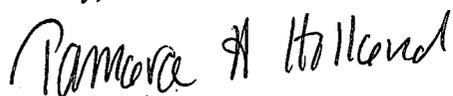
However, a document relating to a police officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the police department and that is maintained in 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 that the submitted information is contained in a personnel file maintained by the department under section 143.089(g). Based on this representation, we conclude that this information is confidential under section 143.089(g) of the Local Government Code and the department must withhold it under section 552.101 of the Government Code. However, we note the officer at issue has been temporarily suspended under section 143.056(a) of the Local Government Code. *See* Local Gov't Code § 143.056(a) (providing for the temporary suspension of a police officer who is officially charged with the commission of a Class A or B misdemeanor). Accordingly, all information relating to this suspension must be maintained in the officer's civil service file under section 143.089(a). *See* Local Gov't Code § 143.089(a)(2); *see also* Attorney General Opinion JC-0257 (2000). Consequently, this information must also be placed in the officer's civil service file. Furthermore, section 143.089(g) requires the department to "refer to the [civil service] director or the director's designee a person or agency that requests information that is maintained in [a] police officer's personnel file." Local Gov't Code § 143.089(g). Thus, the department must refer this requestor to the civil service director or the director's designee.

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/jb

Ref: ID# 380951

Enc. Submitted documents

c: Requestor
(w/o enclosures)