



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2010

Mr. John D. Lestock
Assistant City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2010-07970

Dear Mr. Lestock:

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# 381237.

The Paris Police Department (the "department") received a request for police videos of two named police officers who responded to a specified incident and any video pertaining to the arrest from that incident. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. You claim the submitted information is confidential under section 552.101 in conjunction with section 143.089 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer, including one that must be maintained as part of the officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). You inform us the City of Paris is a civil service city under chapter 143 of the Local Government Code.

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 any instance 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. 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, pet. denied). 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). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See Local Gov't Code* § 143.089(b)-(c).

Subsection (g) of section 143.089 authorizes the police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Id. § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made those records confidential. *See City of San Antonio*, 851 S.W.2d at 949 (concluding that "the legislature intended to deem confidential the information maintained by the . . . police department for its own use under subsection (g)"). The court stated that the provisions of section 143.089 governing the content of the civil service file reflect "a legislative policy against disclosure of unsubstantiated claims of misconduct made against police officers and fire fighters, except with an individual's written consent." *Id.*; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet.) (restricting confidentiality under section 143.089(g) to "information reasonably related to a

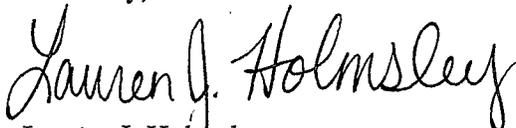
police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files).

You state the submitted information relates to misconduct that resulted in the suspension of one of the police officers named in the request, and you inform us that the officer at issue is now appealing that suspension. Although you contend this information must be maintained in the police department's confidential internal file created under section 143.089(g) because of the pending appeal, we note that 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-.055 (describing "disciplinary action" for purposes of section 143.089(a)(2)); Attorney General Opinion JC-0257 (2000). We note section 143.089(c) provides that information that must be placed in a civil service file under section 143.089(a)(2) may be removed if the civil service commission determines that (1) the disciplinary action was taken without just cause or (2) the charge of misconduct was not supported by sufficient evidence. See Local Gov't Code § 143.089(c). Section 143.089(c) therefore signifies that complaint files resulting in disciplinary action must be placed in the civil service file during the pendency of the appeal. The submitted information relates to misconduct that resulted in disciplinary action against the officer at issue. Therefore, this information must be maintained in the civil service file pursuant to section 143.089(a)(2), and thus it may not be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. As you raise no remaining arguments against disclosure, we find the submitted video must be released.

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,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 381237

Enc. Submitted documents

c: Requestor
(w/o enclosures)