



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2010

Mr. Clark T. Askins  
Askins & Askins, P.C.  
Attorneys & Counselors  
P.O. Box 1218  
La Porte, Texas 77572-1218

OR2010-09148

Dear Mr. Askins:

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# 383532.

The City of La Porte (the "city"), which you represent, received a request for information relating to two named police officers. You claim 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. This section encompasses information protected by other statutes, including section 143.089 of the Local Government Code. You state the City of La Porte 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 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 a police officer's misconduct and takes disciplinary action against the police 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).<sup>1</sup> 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 personnel file. See *id.* Such records are subject to release under chapter 552 of the 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. See 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 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 Gen.*, 851 S.W. 2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the submitted information is maintained within the department's internal files for each of the named officers. We note the submitted information includes a periodic evaluation, which we marked, that must also be maintained in the named officer's civil service file under section 143.089(a). You inform us that any information required to be maintained in the officers' civil service files will be released to the requestor. Thus, upon review, we conclude the remaining submitted information must be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

In summary, with the exception of periodic evaluation we marked which must be maintained in the police officer's civil service file, the city must withhold the submitted information under section 143.089(g) 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](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

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<sup>1</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov't Code §§ 143.051- .055.

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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

Ref: ID# 383532

Enc. Submitted documents

c: Requestor  
(w/o enclosures)