



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2010

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
3304 Community Boulevard
Killeen, Texas 76542

OR2010-11779

Dear Ms. Mapes:

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# 389161 (ORR# W003715).

The Killeen Police Department (the "department") received a request for the arbitrator ruling in the case involving the indefinite suspension of a named officer. 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 exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code for the personnel records at issue. You state the City of Killeen (the "city") is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: 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). 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.

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.). Such investigatory records are subject to release under chapter 552 of the Government Code. *See id.* § 143.089(f); *see also* Open Records Decision No. 562 at 6 (1990). 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 a charge of misconduct. *See* Local Gov't Code § 143.089(b). In addition, a document relating to disciplinary action against a police officer that has been placed in the officer's personnel file as provided by section 143.089(a)(2) must be removed from the officer's file if the commission finds the disciplinary action was taken without just cause or the charge of misconduct was not supported by sufficient evidence. *See* Local Gov't Code § 143.089(c).

Subsection (g) authorizes but does not require the city police department to maintain for its use a separate and independent, internal personnel file on a peace officer. Section 143.089(g) provides:

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.

See Occ. Code § 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 city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for

which no disciplinary action was taken. The court determined section 143.089(g) made these records confidential. *See id.* at 949; *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 Local Gov't Code § 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 inform us the information at issue has not been placed in either the department’s internal personnel file maintained under section 143.089(g) or the city’s civil service file maintained under section 143.089(a) because the department is uncertain about its proper placement. As noted above, section 143.089 contemplates the existence of two files concerning an officer. Documents relating to commendations, periodic evaluations by the officer’s supervisor, and allegations of misconduct resulting in disciplinary action must be placed in the civil service file and are subject to public disclosure under the Act. Local Gov’t Code § 143.089(a)(1)-(2). Documents that relate to unsustained allegations of misconduct or disciplinary action taken without just cause must be held in the police department’s confidential file maintained under section 143.089(g). *Id.* § 143.089(b), (c). We find the department’s failure to place the information at issue in either file contravenes the purpose and legislative intent of section 143.089. *See City of San Antonio*, 851 S.W.2d at 946. The submitted documents pertain to an allegation of misconduct against an officer that ultimately resulted in a 15-day suspension of the officer at issue. Accordingly, the submitted information relates to misconduct that resulted in disciplinary action pursuant to section 143.089. Thus, while the submitted information may be kept in the internal file maintained under subsection 143.089(g), it must also be kept in the civil service personnel file maintained under subsection 143.089(a). *See* Local Gov’t Code § 143.089(a)(2). We note the request, in this instance, was received by the department, which maintains the section 143.089(g) file. Therefore, because the information at issue was requested from the department, in this instance, it is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code. We note section 143.089(a) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the city’s civil service director or the director’s designee. Accordingly, you must refer the requestor to the city’s civil service director.

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,

A handwritten signature in cursive script, appearing to read "Claire V. Morris Sloan". The signature is written in black ink and is positioned above the typed name.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 389161

Enc. Submitted documents

c: Requestor
(w/o enclosures)