



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 23, 2010

Ms. Julia Gannaway
Lynn, Pham & Ross, L.L.P.
306 West Broadway Avenue
Fort Worth, Texas 76104

OR2010-17719

Dear Ms. Gannaway:

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# 401126.

The City of White Settlement (the "city"), which you represent, received a request for a specified personnel complaint and a letter of demotion regarding a named police officer. You state you have released the letter of demotion. 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 representative sample of information.¹

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 excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. You inform us the city 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 the civil service director is required to maintain, and an internal file the police department may

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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, information 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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the information at issue is contained in the city police department's internal file for the named police officer and that this information is maintained under section 143.089(g). Based on this representation and our review of the submitted documents, we agree the information at issue maintained in the city police department's file is confidential and must be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. However, you inform us, and the submitted information reflects, the officer at issue received a voluntary demotion. 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). A voluntary demotion is a disciplinary action under subchapter D of chapter 143 of the Local Government Code. *See id.* § 143.054(e) (voluntary demotion). As previously stated, all information pertaining to charges of misconduct that resulted in disciplinary action must be maintained in the officer's civil service file under section 143.089(a) of the Local Government Code. In this instance, the request was received by the city, which has access to the files maintained under sections 143.089(a) and 143.089(g); therefore, the request encompasses both of these files. Although you have not submitted the civil service file maintained under section 143.089(a) for our review, we note the submitted information must be included in that file. *See* 109 S.W.3d at 122. Information contained in the civil service file generally

must be released, unless it is shown that some provision of the Act permits the information to be withheld from public disclosure. *See* Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; ORD 562 at 6. As you raise no further exception to disclosure, the city must release the submitted information from the officer's civil service file.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 401126

Enc. Submitted documents

c: Requestor
(w/o enclosures)