



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 6, 2010

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2010-18228

Dear Mr. Weir :

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# 401914 (COSA ORR 2010-6589).

The San Antonio Police Department (the "department") and the San Antonio Firefighters' and Police Officers' Civil Service Commission (the "commission") received a request for all documents relating to a named police officer regarding his suspension following an incident that occurred in January 2009, and any additional allegations of misconduct in 2008 and 2009. Both the department and the commission claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 that other statutes make confidential. The department raises section 552.101 in conjunction with section 143.089 of the Local Government Code.<sup>1</sup> 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

---

<sup>1</sup>We understand that the City of San Antonio is a civil service municipality under chapter 143 of the Local Government Code.

police officer's civil service file and another the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g).

The police officer's civil service file must contain specific items, including commendations, periodic evaluations by the officer's supervisor, and documents from the employing department relating to any misconduct in which the department took disciplinary action<sup>2</sup> against the officer under chapter 143 of the Local Government Code. *See id.* § 143.089(a)(1), (2). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action, it is required by section 143.089(a)(2) to place all investigatory records<sup>3</sup> from the employing department relating to the investigation and disciplinary action in the police officer's civil service file maintained under section 143.089(a). *See* *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). Investigatory materials 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. *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, 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).

The department states that the information submitted in Attachments 2 and 3 is contained in the officer's internal department file under section 143.089(g). We note that portions of this information pertain to an internal administrative investigation of the officer for misconduct that resulted in a suspension. As described above, documents in the officer's internal department file that relate to any misconduct in cases in which the department took disciplinary action against the officer must also be included in the officer's civil service file. *See* Local Gov't Code § 143.089(a)(2). The department states the request has been forwarded to the commission.<sup>4</sup> Therefore, we agree the department must withhold Attachments 2 and 3 under section 552.101 of the Government Code in conjunction with 143.089(g) of the Local Government Code. The commission also maintains

---

<sup>2</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. Local Gov't Code §§ 143.051-.055.

<sup>3</sup>Investigatory records include, but are not limited to, background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity. *See* *Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.).

<sup>4</sup>Section 143.089(g) requires a police or fire department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

Attachment 2 in the officer's civil service file under section 143.089(a). Accordingly, we address the commission's arguments against disclosure below.

The commission raises section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Based on your representations, we understand Attachment 2 consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001 (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). Therefore, this information is within the scope of section 261.201. You do not indicate that the commission has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude that Attachment 2 is confidential pursuant to section 261.201 of the Family Code, and the commission must withhold it in its entirety under section 552.101 of the Government Code.

In summary, the department must withhold Attachments 2 and 3 pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The commission must withhold Attachment 2 pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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 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 that reads "Misty Haberer Barham".

Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID# 401914

Enc. Submitted documents

c: Requestor  
(w/o enclosures)