



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 9, 2011

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-03276

Dear Mr. Phillips:

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# 412470 (City of Fort Worth Public Information Request No. W006005).

The Fort Worth Police Department (the "department") received a request for information pertaining to a named former department officer's involvement with Aces Wired and personnel and payroll information about the named officer since 2007. You state the officer's civil service file and post-retirement reserve officer records will be released, but 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. You state the City of Fort Worth 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 the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). Chapter 143

prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055. 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). *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. *Id.* Such records are subject to release under the Act. *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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

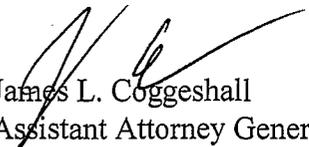
You inform us the submitted information is contained in the police department's internal file for the named former department officer maintained under section 143.089(g). The requestor argues Open Records Letter No. 2007-010883 (2007) prohibits the department from using section 143.089 to withhold documents relating to misconduct that resulted in discipline. We note some of the submitted information relates to commendations and findings of misconduct that resulted in disciplinary suspensions of the officer. An officer's civil service file must contain documents relating to commendations or any misconduct in those cases where the police department took disciplinary action against the officer. *See* Local Gov't Code § 143.089(a)(1)-(2); *see also id.* §§ 143.051-143.052 (suspension and uncompensated duty are “disciplinary action[s]” for purposes of section 143.089(a)(2)). Therefore, the commendation information and disciplinary documents are subject to section 143.089(a). Consequently, if you have not done so already, you must also place this information in the officer's civil service file. You indicate the request has been forwarded to the Civil Service Commission of the City of Fort Worth.¹ Therefore, we agree the submitted information is confidential under section 143.089(g) of the Local Government Code and the department must withhold it from disclosure under section 552.101 of the 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.

¹Section 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.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tf

Ref: ID# 412470

Enc. Submitted documents

c: Requestor
(w/o enclosures)