



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 4, 2011

Ms. Jessica C. Eales
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-04600

Dear Ms. Eales:

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# 413432 (GC No. 18168).

The City of Houston (the "city") received a request for employment applications and any disciplinary actions pertaining to ten named police officers. You state some of the requested information has been or will be made available to the requestor. You claim that 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 143.089 of the Local Government Code. You state that 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 that the 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 an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and subsequent disciplinary action in the police officer's civil service file maintained under section 143.089(a), which is generally subject to public

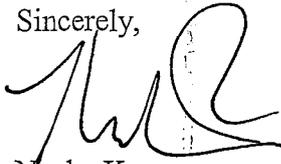
release.¹ *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). However, section 143.089(c) states that a document relating to alleged misconduct or disciplinary action against an officer must be removed from the officer's civil service file if it is found that the 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). Information removed from the civil service file may then be placed in a police department's internal file maintained pursuant to section 143.089(g). This information 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).

In this instance, you inform us that the submitted information pertains to disciplinary actions against the officers at issue which were overturned on appeal by independent hearing examiners. You explain that pursuant to section 143.1016 of the Local Government Code, police officers can appeal to an independent third party hearing examiner. *See* Local Gov't Code § 143.1016. Accordingly, you assert that the submitted information should be removed from the officer's civil service file and placed in the city police department's internal personnel file, which is maintained under section 143.089(g). Based on your representations, we agree that the submitted information is confidential under section 143.089(g) of the Local Government Code and must be withheld 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.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

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¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055.

Ref: ID# 413432

Enc. Submitted documents

cc: Requestor
(w/o enclosures)