



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 17, 2011

Ms. Marivi Gambini
Paralegal
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2011-06943

Dear Ms. Gambini:

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# 417745 (City ID# PI-11-496 (No. 2)).

The City of Irving (the "city") received a request for all grievances involving city fire department employees filed in the six months prior to the request. You state you will release some information to the requestor. 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 section encompasses information protected by other statutes. You state the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code contemplates two different types of personnel files, a fire fighter's civil service file the civil service director is required to maintain, and an internal file the fire department may maintain for its own use. Local Gov't Code § 143.089(a), (g). The fire fighter's civil service file must contain certain specified items, including commendations, periodic evaluations by the fire fighter's supervisor, and documents relating to any misconduct in which the department took disciplinary action against the fire fighter 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 department investigates a fire fighter's misconduct and takes disciplinary action against a fire fighter, 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 fire fighter'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 fire fighter'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 fire fighter's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a fire fighter's employment relationship with the department and that is maintained in a fire department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the submitted information is maintained in the city fire department's internal file pursuant to section 143.089(g). You further state the submitted information relates to an investigation of a complaint that has not yet concluded in disciplinary action. Accordingly, we conclude that the information at issue is confidential, and the city must withhold it under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local 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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, written over a vertical line of dots that runs down the center of the page.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 417745

Enc. Submitted documents

c: Requestor
(w/o enclosures)