



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2011

Ms. Constance Acosta
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2011-08537

Dear Ms. Acosta:

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# 421555 (League City ORR #11-114).

The City of League City (the "city"), which you represent, received a request for letters or statements of police officer discipline, to include the matter of the investigation, disciplinary action, and the results for the past five years.¹ You claim some of 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 exception encompasses information other statutes make confidential. You claim the submitted information is confidential under section 552.101 in conjunction with section 143.089 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer, including one that must be maintained as part of the police officer's civil service file and

¹You state the city sought and received clarification of the instant request from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

another the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). You inform us the city is a civil service city under chapter 143 of the Local Government Code.

In cases in which a department investigates a police officer's misconduct and takes disciplinary action, it is required by section 143.089(a)(2) of the Local Government Code to place 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) of the Local Government Code. *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. Local Gov't Code §§ 143.051-.055.

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. *See Abbott*, 109 S.W.3d at 122. 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). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the department determines there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See* Local Gov't Code § 143.089(b)-(c).

Subsection (g) of section 143.089 authorizes the department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Id. § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined section 143.089(g) made those records confidential. *See City of San Antonio*, 851 S.W.2d at 949 (concluding that "the legislature

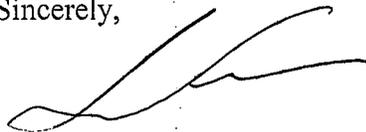
intended to deem confidential the information maintained by the . . . police department for its own use under subsection (g)"). The court stated the provisions of section 143.089 governing the content of the civil service file reflect "a legislative policy against disclosure of unsubstantiated claims of misconduct made against police officers and fire fighters, except with an individual's written consent." *Id.*; see also *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet.) (restricting confidentiality under section 143.089(g) to "information reasonably related to a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files).

You state the city seeks to withhold the information you have marked in the submitted termination letter. You state the termination letter contains both sustained and unsustained charges, information, and allegations. We note the termination letter pertains to an investigation of allegations of misconduct on the part of the police officer at issue that resulted in the removal of the police officer. As stated above, a police officer's civil service file must contain certain specified items, including all investigatory records relating to the investigation and disciplinary action. No information contained in the civil service file may be withheld under section 143.089. See Local Gov't Code § 143.089(f); ORD 562 at 6 (1990). Additionally, you also inform us the termination letter was placed in the police officer's civil service file. Thus, we conclude you have failed to demonstrate section 143.089(g) is applicable to any portion of the termination letter. Consequently, the city must release the submitted termination letter in its entirety.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/bs

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Enc. Submitted documents

c: Requestor
(w/o enclosures)