



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2011

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053-4045

OR2011-12840

Dear Mr. Alcorn:

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# 428903.

The Grand Prairie Police Department (the "department") received a request for the personnel files of two named officers. You state that the department will release some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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

¹Although you raise section 552.024 of the Government Code as an exception to disclosure, we note that this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024. We note section 552.117 of the Government Code is the proper exception to assert.

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See id.* §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Code § 552.101. This section encompasses information protected by other statutes such as section 143.089 of the Local Government Code. You inform us that the City of Grand Prairie (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 relating to a police officer: 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). The officer’s civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer’s supervisor, and documents relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(3).

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).³ *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 police department because of its investigation into a police officer’s misconduct, and the police 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 an officer’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). In addition, a document relating to disciplinary action against a police officer that has been placed in the officer’s personnel file as provided by section 143.089(a)(2) must be removed from the officer’s file if the civil service commission finds the disciplinary action was taken without just cause or the charge of misconduct was not supported by sufficient evidence. *See id.* § 143.089(c). Information that reasonably relates to an officer’s employment relationship with the police department and that is maintained in a police department’s internal file pursuant to section 143.089(g) is confidential and must not be released.⁴ *See City of San Antonio v. San Antonio*

³Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. Local Gov’t Code §§ 143.051–.055; *see, e.g.*, Attorney General Opinion JC-0257 (2000) (written reprimand is not disciplinary action for purposes of Local Government Code chapter 143).

⁴We note that section 143.089(g) requires a police department who 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. You inform us that all of the information that is in the officers’ civil service files will be released to the requestor.

Express-News, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the information at issue is maintained in the department's internal files pursuant to section 143.089(g). Additionally, you explain that neither officer has been disciplined by the department. Based on your representations and our review, we conclude that the information at issue is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.⁵

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/bs

Ref: ID# 428903

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue.