



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2011

Mr. Pete Steele  
Counsel for the City of Port Neches  
McPherson Hughes Bradley Wimberly Steele Chatelain L.L.P.  
3120 Central Mall Drive  
Port Arthur, Texas 77642

OR2011-13267

Dear Mr. Steele:

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# 431748.

The City of Port Neches (the "city"), which you represent, received a request for information pertaining to (1) the suitability of the requestor for his initial employment with the city, (2) the suitability of the requestor to assume additional duties, and (3) discussions of the requestor's speech. You indicate the city will release some of the submitted information to the requestor, but 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 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 is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a firefighter's civil service file that the civil service director is required to maintain, and an internal file that the department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a fire department investigates a firefighter's misconduct and takes disciplinary action against the firefighter, 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 firefighter'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 firefighter's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055. Such records are subject to release under the Act. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to a firefighter's alleged misconduct may not be placed in the firefighter's 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 firefighter's employment relationship with the department and that is maintained in a department 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 Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

We understand Attachment 2.C contains a preemployment background investigation of a firefighter and Attachment 2.D pertains to investigations that did not result in disciplinary action against any firefighter. You state this information is maintained in the fire department's internal files. Based on your representations and our review of the documents at issue, we conclude Attachments 2.C and 2.D are confidential pursuant to section 143.089(g) of the Local Government Code and the city must withhold this information under section 552.101 of the Government Code.

We note Attachment 2.A contains mental health records that are subject to chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) states “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Health & Safety Code § 611.001(b). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the information constituting mental health records that the city may only release in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

To conclude, the city must withhold Attachments 2.C and 2.D under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city may only release the mental health records we have marked in accordance with

sections 611.004 and 611.0045 of the Health and Safety Code. The city must release the remaining information.

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](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/eb

Ref: ID# 431748

Enc. Submitted documents

c: Requestor  
(w/o enclosures)