



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 20, 2011

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

OR2011-13590

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# 430359.

The City of Grand Prairie (the "city") received a request for the daily observation reports pertaining to the requestor's performance in the city's field training officer program. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

First, we address the requestor's assertion that the city has disclosed the requested reports to investigators at another city's police department. Section 552.007 of the Government Code provides that the Public Information Act "does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, *unless the disclosure is expressly prohibited by law or the information is confidential under law.* [However, p]ublic information made available . . . must be made available to any person." *Id.* § 552.007 (emphasis added). In other words, a governmental body may not voluntarily disclose information to one member of the public and then refuse

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<sup>1</sup>While you do not expressly raise section 552.101 of the Government Code in your brief, based on your arguments we understand you to assert section 552.101.

to provide that same information to another member of the public unless the information is confidential by law. On the other hand, a release of information by one governmental entity to another governmental entity is generally not a release to the public for the purposes of section 552.007. Open Records Decision No. 516 (1989); *see* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655 (1997), 414 (1984); *see also* Occ. Code § 1701.451(a-1) (upon receipt of proper consent, law enforcement agency must release employment records of applicant to hiring law enforcement agency). Even if we assume the records were publicly released, however, the city claims they are confidential under section 143.089(g) of the Local Government Code. Thus, the city would still be required to withhold the information in this instance if it were found to be confidential. Therefore, we will address the city's arguments under section 552.101 of the Government Code in conjunction with section 143.089(g).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. We understand 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. Local Gov't Code § 143.089(a), (g). We note section 143.089(a) requires the civil service director to maintain a personnel file on each "police officer." Likewise, section 143.089(g) states that a police department may maintain a personnel file on each "police officer." Both subsections refer to "police officer." You state that at the time of his resignation, the requestor was a hired employee of the city's police department (the "department") who had not completed his probationary period as a police officer. Section 143.003 defines a police officer as a member of a police department or other peace officer who was appointed in substantial compliance with chapter 143 or who is entitled to civil service status under other sections of chapter 143. *Id.* § 143.003(5). In this instance, you represent the requestor had been appointed in substantial compliance with chapter 143. Therefore, we agree the requestor was a "police officer" subject to chapter 143.

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).<sup>2</sup> *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 police officer's

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<sup>2</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055.

misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under the Act. See Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department's internal file pursuant to section 143.089(g) 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).

You state the submitted information is maintained in the department's internal file pursuant to section 143.089(g). We find this information pertains to the employment relationship of the officer at issue. Additionally, upon review, the submitted information does not contain any departmental investigation of the requestor's misconduct that resulted in disciplinary action. Therefore, based on your representations and our review, we conclude that the submitted information 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.

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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/agn

Ref: ID# 430359

Enc. Submitted documents

c: Requestor  
(w/o enclosures)