



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2011

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2011-15807

Dear Ms. Benton:

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# 434463 (Waco Ref. No. LGL-11-1145).

The Waco Police Department (the "department") received a request for a named officer's personnel file and any records relating to sustained disciplinary actions and events regarding this officer. You inform us the department will release some of the requested information upon receipt of the requestor's payment. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions 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 excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. You state the City of Waco is a civil service city pursuant to chapter 143 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: a file that must be maintained by the civil service director as part of the officer's civil service file, and an internal file that the police department may maintain for its own use. *See* 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.” We note the named officer was a hired employee of the department who did not complete his field training program. 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). We understand the named officer was appointed in substantial compliance with chapter 143. Therefore, we agree the named officer was a “police officer” subject to chapter 143.

We note an 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. *Id.* § 143.089(a)(1)-(3). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. 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). *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 in 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. *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 that reasonably relates to a police officer’s employment relationship with the 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. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us the submitted information is maintained in the department’s internal file of the named officer pursuant to section 143.089(g). However, we note the information at issue includes a commendation received by the named officer. As noted above, an officer’s civil service file must contain commendations. *See Local Gov’t Code* § 143.089(a)(1). Thus, this commendation, which we have marked, must be placed in the named officer’s civil service file unless the department has already done so. *See id.* The department must refer the requestor to the civil service director or the director’s designee. *See id.* § 143.089(g). We agree, however, that the submitted information is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.¹

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 434463

Enc. Submitted documents

c: Requestor
(w/o enclosures)