



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2012

Ms. Cheryl K. Byles
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2012-01923

Dear Ms. Byles:

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# 445250 (Fort Worth PIR No. W013230).

The City of Fort Worth (the "city") received a request for a specified individual's personnel file. You state you have released the majority of the requested information. You claim that 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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 provides for the existence of two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. *See* 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)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension,

demotion, and uncompensated duty. *Id.* §§ 143.051-.055. We note a letter of reprimand does not constitute discipline under chapter 143. Attorney General Opinion JC-0257. 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 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. *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, 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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted information is held in files maintained by the city's police department under section 143.089(g). Upon review, we agree that the information maintained in the city's police department's internal files is confidential under section 143.089(g) of the Local Government Code and, therefore, the submitted information must generally be withheld from disclosure under section 552.101 of the Government Code.

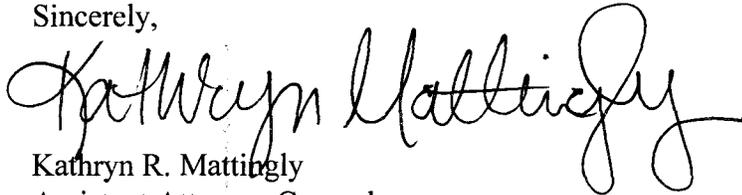
The requestor asserts that he has a right of access to the submitted information as he is the authorized representative of the person who is the subject of the information. Although section 552.023 of the Government Code grants a person a special right of access to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests, confidentiality under section 143.089(g) of the Local Government Code is not privacy based. *See Gov't Code § 552.023(a)*. Therefore, because the submitted information is maintained pursuant to section 143.089(g), the right of access under section 552.023 does not apply to this information, and the city must withhold it under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local 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,

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,

A handwritten signature in black ink, appearing to read "Kathryn R. Mattingly". The signature is fluid and cursive, with a large loop at the end of the last name.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/som

Ref: ID# 445250

Enc. Submitted documents

c: Requestor
(w/o enclosures)