



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2012

Ms. Allison Bastian
Assistant City Attorney
City of Brownsville
P.O. Box 911
Brownsville, Texas 78522-0911

OR2012-02383

Dear Ms. Bastian:

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# 446165.

The Brownsville Police Department (the “department”) received a request for a specified letter. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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. Section 552.101 excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. You state the City of Brownsville 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

¹Although you also raised section 552.108 of the Government Code in your initial brief to this office, you have not indicated that any of the submitted information falls within this section and have provided no arguments explaining how this section applies to the submitted information. Therefore, we assume you are no longer claiming section 552.108. See Gov’t Code §§ 552.301, .302.

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). 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. *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; *see* Attorney General Opinion JC-0257 (2000) (written reprimand is not disciplinary action for purposes of 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). *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 state the submitted information relates to an internal affairs investigation of a police officer that did not result in any disciplinary action under chapter 143. Further, you state the submitted information is maintained in the department's internal file pursuant to section 143.089(g). Based on your representations and our review, we agree 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, 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 cursive script, appearing to read "Michelle R. Garza", followed by a horizontal line.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

Ref: ID# 446165

Enc. Submitted documents

c: Requestor
(w/o enclosures)