



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2012

Ms. Julia Gannaway
For City of Port Neches
Lynn Pham & Ross, L.L.P.
306 West Broadway Avenue
Fort Worth, Texas 76104

OR2012-02842

Dear Ms. Gannaway:

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# 446448.

The City of Port Neches (the “city”), which you represent, received a request for a specified letter and any response to the specified letter. You state the city does not maintain the requested response to the specified letter.¹ 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. We have also received and considered comments from the requestor. *See* Gov’t Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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. You state the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two

¹In responding to a request for information under the Act, a governmental body is not required to disclose information that did not exist at the time the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

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).

You state the information at issue consists of a letter that is maintained in the city fire department's internal personnel files. We understand the requestor to generally assert a right of access to the requested information. Although section 143.089(e) provides a fire fighter a right of access to his or her own civil service file maintained under section 143.089(a), this office has determined that fire fighters do not have a right to their own internal files maintained by the city's fire department pursuant to section 143.089(g). *See* Open Records Decision No. 650 at 3 (1996) (confidentiality provision of section 143.089(g) contains no exceptions). Thus, because the submitted information is maintained in the city fire department's internal file pursuant to section 143.089(g), the requestor does not have a right of access to these records under section 143.089. Based on your representations and our review, we conclude the information at issue is 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.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 446448

Enc. Submitted documents

c: Requestor
(w/o enclosures)