



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 7, 2012

Ms. Julia Gannaway  
Lynn, Pham & Ross, LLP  
306 West Broadway Ave.  
Fort Worth, Texas 76104

OR2012-03439

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# 447262.

The Alice Police Department (the “department”), which you represent, received a request for personnel file reports of a named officer pertaining to any reprimands, write ups, or disciplinary actions since his employment with the City of Alice (the “city”). You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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 exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code. You inform us 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

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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. 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 the records contains in Exhibit B-2 were compiled and placed in the officer's departmental personnel files prior to the city's adoption of chapter 143, and you ask whether section 143.089(g) applies to these documents. In *Wilson v. Andrews*, the supreme court held that although chapter 143 did not provide a police officer with the option to appeal his suspension to a neutral third-party hearing examiner when the city adopted chapter 143, the city was bound by the post-adoption amendment to the chapter providing for such an option. 10 S.W.3d 663, 668 (Tex. 1999). In the instant case, the documents at issue were compiled prior to the city's adoption of chapter 143. However, after the city's adoption of the chapter, as in *Wilson*, chapter 143 applies to these documents and the department must withhold them if they are confidential under section 143.089(g).

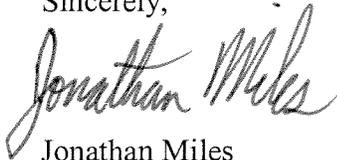
You inform us the submitted information consists of disciplinary records pertaining to the named officer. We understand these records pertain to investigations which have not resulted in discipline of the named officer. You state the submitted information is maintained in the department's internal files as authorized under section 143.089(g) of the Local Government Code. Based on this representation and our review, we find the submitted information is confidential pursuant to section 143.089(g). Accordingly, the department

must withhold the submitted information 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 447262

Enc. Submitted documents

c: Requestor  
(w/o enclosures)