



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 17, 2012

Ms. Cary Grace  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2012-05448

Dear Ms. Grace:

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# 450942.

The Austin Fire Department (the “department”) received a request for information pertaining to a specified internal investigation. You claim 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 representative sample of information.<sup>1</sup> We have also received and considered comments submitted by the requestor. 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 of Austin is a

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<sup>1</sup>We assume the “representative sample” of information 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 those records contain substantially different types of information than those submitted to this office.

civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two 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-.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 submitted information consists of investigation materials pertaining to an internal inquiry to determine if there was any misconduct by firefighters employed by the department. You state the investigation did not result in disciplinary action pursuant to chapter 143 of the Local Government Code. You state this information is maintained in the department's internal personnel files. Based on your representations and our review, we conclude the submitted information is confidential pursuant to section 143.089(g) of the Local Government Code and the department 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](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 "Sean Nottingham".

Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/akg

Ref: ID# 450942

Enc. Submitted documents

c: Requestor  
(w/o enclosures)