



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 5, 2012

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

OR2012-10297

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# 458003.

The Austin Police Department (the "department") received a request for several categories of information pertaining to specified incidents and specified officers. You claim some of the requested 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.<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 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 civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police officer's civil service file that the civil service director is required to maintain, and an internal file that the

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<sup>1</sup>We assume 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 these records contain substantially different types of information than that submitted to this office.

police department may maintain for its own use. 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 any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). 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).<sup>2</sup> *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 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 maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released.<sup>3</sup> *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted information is maintained in the department's internal personnel file pursuant to section 143.089(g). You state, and the submitted documentation reveals, that this information pertains to allegations of misconduct that did not result in disciplinary action for purposes of chapter 143. However, we note the information at issue includes a commendation received by one of the specified officers. As noted above, an officer's civil service file must contain commendations. *See* Local Gov't Code § 143.089(a)(1). Thus, this commendation, which we have marked, must be placed in the officer's civil service file unless the department has already done so. *See id.* The department must refer the requestor to the civil service director or the director's designee. *See id.* § 143.089(g). We further note, the submitted information contains 9-1-1 call sheets. In this instance, the requestor has specifically requested these law enforcement records, which the department maintains for law enforcement purposes separate and apart from its internal files. The department may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Accordingly, the 9-1-1 calls sheets are not confidential under section 143.089(g) of the Local Government Code. Thus, the department may not

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<sup>2</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055.

<sup>3</sup>We note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

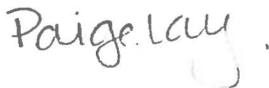
withhold the call sheets, which we have marked, under section 552.101 of the Government Code on this basis. The remaining submitted information is confidential under section 143.089(g) and must be withheld under section 552.101 of the Government Code on that basis.

In summary, with the exception of the information we have marked for release, the submitted is confidential under section 143.089(g) 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](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,



Paige Lay,  
Assistant Attorney General  
Open Records Division

PL/som

Ref: ID# 458003

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)