



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 5, 2012

Mr. David H. Guerra  
City Attorney  
City of Mission  
King, Guerra, Davis & Garcia  
P.O. Box 1025  
Mission, Texas 78573

OR2012-10351

Dear Mr. Guerra:

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# 458083.

The Mission Police Department (the "department") received a request for records related to the suspension of a named officer, including an indefinite order of suspension and attachments. 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 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 of the Government Code encompasses section 143.089 of the Local Government Code. We understand the City of Mission is a civil service city under chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code 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 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 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)-(3).

In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against a police officer, it is required by section 143.089(a)(2) of the Local Government Code 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) of the Local Government Code. *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 police department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Chapter 143 of the Local Government Code 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, 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 submitted information relates to the indefinite suspension of the named officer. You inform us the officer appealed the suspension and the appeal is yet to be heard by the Hearing Examiner. You state the submitted information is maintained in the department's internal file under section 143.089(g) because the matter has not resulted in final, non-appealable disciplinary action. However, we note an officer's civil service file must contain documents relating to any misconduct in those cases where the department took disciplinary action against the officer. *See* Local Gov't Code § 143.089(a)(2); *see also id.* §§ 143.051-.055 (describing disciplinary action for purposes of section 143.089(a)(2)); Attorney General Opinion JC-0257 (2000). Section 143.089(c) provides that information that must be placed in a civil service file under section 143.089(a)(2) may be removed from the civil service file if the civil service commission determines (1) the disciplinary action was taken without just cause or (2) the charge of misconduct was not supported by sufficient evidence. *See* Local Gov't Code § 143.089(c). Section 143.089(c), therefore, signifies complaint files resulting in disciplinary action must be placed in the civil service file during the pendency of the appeal. We find the submitted information relates to misconduct that resulted in disciplinary action against the named officer. Thus, the submitted information must be placed in the named officer's civil service file. *See id.* § 143.089(a)(2). The department must refer the requestor to the civil service director or the director's designee. *See id.* § 143.089(g). We agree, however, the submitted information is confidential under 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](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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/bs

Ref: ID# 458083

Enc. Submitted documents

c: Requestor  
(w/o enclosures)