



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 10, 2012

Mr. Norman Ray Giles  
Counsel for the City of Santa Fe  
Chamberlain, Hrdlicka, White, Williams & Aughtry  
1200 Smith Street, Suite 1400  
Houston, Texas 77002

OR2012-10609

Dear Mr. Giles:

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# 459525.

The City of Santa Fe (the "city"), which you represent, received a request for personnel records regarding a named city police officer. You state some of the requested information has been released. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, and 552.1175 of the Government Code. You also state some of the submitted information is the subject of a previous open records letter ruling. We have considered your arguments and reviewed the information you submitted.<sup>1</sup>

You inform us the information submitted as Exhibit B was the subject of a previous request for a decision, as a result of which this office issued Open Records Letter No. 2011-05694 (2011). In that ruling, we concluded the city's police department (the "department") must withhold the information related to the officer who is the subject of the instant request under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. We note we also concluded information

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<sup>1</sup>This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

related to the named officer must be withheld under section 552.101 on the basis of section 143.089(g) in Open Records Letter No. 2011-06267 (2011). You do not indicate there has been any change in the law, facts, or circumstances on which the previous rulings are based. We therefore conclude the city must continue to rely on those rulings as previous determinations and withhold Exhibit B and any other submitted information they encompass on the basis of Open Records Letter Nos. 2011-05694 and 2011-06267.<sup>2</sup> See Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). To the extent the previous rulings do not encompass the submitted information, we consider your exceptions to its disclosure.

Section 552.101 of the Government Code exempts 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 claim section 552.101 in conjunction with section 143.089 of the Local Government Code.<sup>3</sup> Section 143.089 provides for the existence of two different types of personnel files relating to a police officer, including 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 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). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* § 143.051 *et seq.* 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). Information relating to alleged misconduct or disciplinary action taken must be

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<sup>2</sup>As we are able to make this determination, we need not address your other arguments against disclosure of any submitted information encompassed by the previous rulings.

<sup>3</sup>We understand the city's police department is a civil service department under chapter 143 of the Local Government Code.

removed from the police officer's civil service file if the police department determines there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See* Local Gov't Code § 143.089(b)-(c).

Subsection 143.089(g) authorizes the police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

*Id.* § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to the file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined section 143.089(g) made the records confidential. *See id.* at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet.) (restricting confidentiality under Local Gov't Code § 143.089(g) to "information reasonably related to a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You inform us the city has released the information maintained in the named officer's civil service file under section 143.089(a). You state the department maintains the submitted information in a confidential internal file pursuant to section 143.089(g). Based on your representations and our review, we conclude the city must withhold any submitted information that is not encompassed by Open Records Letter Nos. 2011-05694 and 2011-06267 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

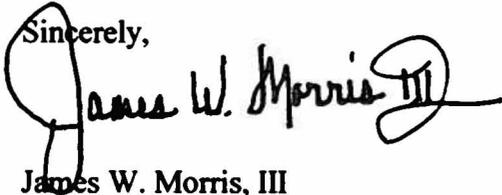
In summary, the city (1) must continue to rely on Open Records Letter Nos. 2011-05694 and 2011-06267 as previous determinations and withhold Exhibit B and any other submitted information the previous rulings encompass on the basis of those rulings and (2) must withhold any submitted information the previous rulings do not encompass

under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.<sup>4</sup>

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 black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/bhf

Ref: ID# 459525

Enc: Submitted information

c: Requestor  
(w/o enclosures)

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<sup>4</sup>As we are able to make these determinations, we need not address your other arguments against disclosure.