



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2012

Ms. Linda Pemberton
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2012-12033

Dear Ms. Pemberton:

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# 460673 (Killeen ID# W008055).

The City of Killeen (the "city") received a request for the personnel file of a named current city employee. You state the city is releasing some information, with personal information redacted pursuant to section 552.117 of the Government Code, as permitted by section 552.024(c) of the Government Code.¹ You claim that 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. This section encompasses information made confidential by other statutes, such as section 143.089 of the Local Government Code. You state the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files for fire fighters in a civil service city: a civil service file the

¹Section 552.024(c) of the Government Code authorizes a governmental body to redact information protected by section 552.117 of the Government Code without the necessity of requesting a decision from this office if the current or former employee to whom the information pertains properly elected to keep this information confidential. *See* Gov't Code § 552.024(c); *see id.* § 552.024(c-1) (requestor may appeal governmental body's decision to withhold information under section 552.024(c) to attorney general), .024(c-2) (governmental body withholding information pursuant to section 552.024(c) must provide certain notice to requestor).

civil service director is required to maintain and an internal file the fire department may maintain for its own use. Local Gov't Code § 143.089(a), (g). The fire fighter'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; *see* Attorney General Opinion JC-0257 (written reprimand is not disciplinary action for purposes of chapter 143 of the Local Government Code).

In cases in which a fire department investigates a fire fighter's misconduct and takes disciplinary action against a fire fighter, 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 fire fighter's civil service file maintained under section 143.089(a). *See 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 fire fighter'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 fire 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 is contained in the city fire department's personnel files maintained under section 143.089(g). Based on your representation and our review, we agree the submitted information is generally confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

We note included with the request for the submitted information, the requestor provided an authorization and release form signed by the individual whose information is at issue. Section 1701.451 of the Occupations Code provides in part:

(a) Before a law enforcement agency may hire a person licensed under this chapter, the agency head or the agency head's designee must:

(1) make a request to the [Commission on Law Enforcement Officer Standards and Education (the "commission")] for any employment termination report regarding the person that is maintained by the commission under this subchapter; and

(2) submit to the commission on the form prescribed by the commission confirmation that the agency:

(A) conducted in the manner prescribed by the commission a criminal background check regarding the person; [and]

(B) obtained the person's written consent on a form prescribed by the commission for the agency to view the person's employment records[.]

...

(a-1) A law enforcement agency that obtains a consent form described by Subsection (a)(2)(B) shall make the person's employment records available to a hiring law enforcement agency upon request.

Occ. Code § 1701.451. In this case, the requestor is the Battalion Chief with the Georgetown Fire Department and states he seeks the requested information as part of an employment background investigation. Further, he provides a copy of the named employee's written consent to view his employment records. Thus, we find that pursuant to section 1701.451(a-1) of the Occupations Code, the requestor has a right of access to the records at issue. Therefore, we must harmonize the right of access provided by section 1701.451(a-1) of the Occupations Code with the confidentiality provided under section 143.089(g) of the Local Government Code. We are guided by the principle of statutory construction that, where possible, we are to construe statutes so as to harmonize them with other relevant laws, not to find conflict. *In re United Servs. Auto. Ass'n* 307 S.W.3d 299, 311 (Tex. 2010). Section 143.089(g) of the Local Government Code generally makes all records in an officer's departmental personnel file confidential. *See* Local Gov't Code § 143.089, *added by* Act of March 1, 1989, 71st Leg., ch. 1, § 25(c) (effective Aug. 28, 1989), *amended by* Act of May 29, 1989, 71st Leg., ch. 1248, § 84 (effective Sept. 1, 1989). However, we conclude that when the Legislature subsequently enacted section 1701.451, it intended to create an exception to the confidentiality of section 143.089(g) by providing a hiring law enforcement agency with a right of access to an officer's personnel file. Act of June 15, 2007, 80th Leg., ch.1068, §1 (effective Sept. 1, 2007); *see also* Occ. Code § 1701.003(a) (allowing an exception to chapter 143 of the Local Government Code where expressly provided in chapter 1701). Therefore, the city must release the submitted information to this requestor.

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, 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 that reads "Kathleen J. Santos".

Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/dls

Ref: ID# 460673

Enc. Submitted documents

c: Requestor
(w/o enclosures)