



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2013

Ms. Nan Rodriguez
Deputy City Attorney
City of Temple
2 North Main, Suite 308
Temple, Texas 76501

OR2013-06180

Dear Ms. Rodriguez:

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# 484057.

The City of Temple (the "city") received a request for seventeen categories of information pertaining to a named city police officer. You state the city has released the requested commendations, periodic evaluations, and information pertaining to formal discipline of the named officer maintained by the city pursuant to section 143.089(a) of the Local Government Code. *See* Local Gov't Code § 143.089(a). You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the requestor specifically excluded the home address, telephone number, social security number, date of birth, driver's license number, license plate information, and any other personally identifying information of the named police officer. Therefore, those types of information are not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release non-responsive information in response to the request. Accordingly, we do not address your arguments against the release of this non-responsive information.

¹We 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 those records contain substantially different types of information than those submitted to this office.

Section 552.101 of the Government Code excepts “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. You state the city is a civil service city under chapter 143 of the Local Government Code. 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 police department took disciplinary action against the officer under chapter 143 of the Local Government Code. *See id.* § 143.089(a)(1)-(3). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See 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 employing department because of its investigation into a police officer’s misconduct, and the employing 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 removed from the police officer’s civil service file if the police department determines that 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).

Section 143.089(g) authorizes a 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, pet. denied) (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 state the submitted information is contained in the personnel file of the police officer that is maintained under section 143.089(g). However, we note the submitted information consists of periodic evaluations of the named officer. While this information may be kept in the internal file maintained under section 143.089(g), it must also be kept in the civil service personnel file maintained under section 143.089(a). *See* Local Gov't Code § 143.089(a)(3). In this instance, the request was received by the city, which has access to the files maintained under both sections 143.089(a) and 143.089(g); therefore, the request encompasses both of these files. Accordingly, the city may not withhold the periodic evaluations maintained in the section 143.089(a) file under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Therefore, the city must release the submitted information to the 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 484057

Enc. Submitted documents

c: Requestor
(w/o enclosures)