



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2013

Ms. Michelle Tapia
Assistant City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2013-19983

Dear Ms. Tapia:

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# 505836.

The City of Carrollton (the "city") received a request for the decision of the hearing examiner in a named city police department officer's civil service appeal of his indefinite suspension. 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 deemed confidential by other statutes, such as section 143.089 of the Local Government Code. You inform us that the city is a civil service city pursuant to 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: a file that must be maintained by the civil service director as part of the officer's civil service file, and an internal file that the police department may maintain for its own 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 which the department took disciplinary action against the officer under chapter 143. *Id.* § 143.089(a)(1)-(3). 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 (2000) (written reprimand is not disciplinary action for purposes of Local Gov't Code chapter 143). 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 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, a document relating to a police officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). In addition, section 143.089(c) states that a document relating to alleged misconduct or disciplinary action against an officer must be removed from the officer's civil service file if it is found that the disciplinary action was taken without just cause. *See id.* § 143.089(c). Information that reasonably relates to a police officer's employment relationship with the department and that is maintained in a police department's internal file pursuant to section 143.089(g) of the Local Government Code is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us the submitted information consists of a record maintained by the city's police department in a personnel file under section 143.089(g). You explain this information pertains to a matter in which a hearings examiner reduced the named officer's discipline from indefinite suspension to counseling and coaching, which do not consist of disciplinary actions for purposes of chapter 143. Based on your representations and our review, we agree the submitted information is generally confidential pursuant to section 143.089(g) of the Local Government Code.

However, we note that the submitted information consists of the requested final decision of the hearing examiner in a public civil service hearing conducted on behalf of the city's civil service commission (the "commission"). *See* Local Gov't Code §§ 143.010(c) (providing each commission proceeding shall be held in public), .057(f) (providing the hearing examiner has the same duties and powers as the commission); *see also Downs v. City of Fort Worth*, 692 S.W.2d 209 (Tex. App.—Fort Worth 1985, writ ref'd n.r.e.) (equating appeals to independent third party hearing examiner with appeals to civil service commission). Section 143.011 of the Local Government Code provides that "[e]ach rule, opinion, directive, decision, or order issued by the commission must be written and constitutes a public record the commission shall retain on file." Local Gov't Code § 143.011(c). Accordingly, we find the hearing examiner's final decision is subject to section 143.011 of the Local Government Code and, thus, is a public record. Thus, we must address the conflict between the public

availability provision of section 143.011 of the Local Government Code and the confidentiality of section 143.089(g) of the Local Government Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). The public availability provision of section 143.011 applies specifically to rules, opinions, directives, decisions, and orders issued by the commission, whereas section 143.089(g) applies generally to all records maintained in a police department's internal file. Thus, we conclude the public availability provision at issue is more specific than section 143.089(g) of the Local Government Code. Therefore, the city may not withhold the submitted information on that basis. Accordingly, the city must release the submitted final decision of the hearing examiner 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 505836

Enc. Submitted documents

c: Requestor
(w/o enclosures)