



ATTORNEY GENERAL OF TEXAS
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June 4, 2014

Mr. C. Robert Heath
Counsel for the City of McAllen
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Building One, Suite 300
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Austin, Texas 78746

OR2014-09529

Dear Mr. Heath:

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# 530115 (City PIR Nos. W014927-041114 and W014928-041114).

The City of McAllen (the "city"), which you represent, received a request for complaints filed by a named employee against another employee during a specified time period and statements collected from employees during an investigation resulting from any such complaints. The city received a second request for two named employees' personnel files and specified complaints involving a named employee. You state you released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 exception encompasses information other statutes make confidential. You claim the submitted information is confidential under section 552.101 in conjunction with section 143.089 of the Local Government Code. We understand the city is a civil

¹We note, and you acknowledge, the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the exception you claim can provide a compelling reason to overcome the presumption of openness, we will consider your claimed exception for the submitted information. *See id.* §§ 552.007, .302, .352.

service city under chapter 143 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files related 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.² 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 related 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)-(3). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. 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 related 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 related to alleged misconduct or disciplinary action taken must be 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 related 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.

²In 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); thus, the request encompasses both of these files.

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 state the submitted information is maintained in the city’s police department’s internal file and pertains to an investigation into allegations of misconduct of a police officer. You state the investigation is still pending and has not resulted in disciplinary action. Upon review, we agree this information is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101.³

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

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³As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 530115

Enc. Submitted documents

c: Requestor
(w/o enclosures)