



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 21, 1995

Ms. Elizabeth A. Lunday
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR95-974

Dear Ms. Lunday:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34637.

The City of Mesquite (the "city") received a request for all internal affairs records concerning three Mesquite police officers. You claim that the requested information is excepted from disclosure under section 143.089 of the Local Government Code as applied through section 552.101 of the Government Code, and sections 552.108 and 552.111 of the Government Code.

Section 143.089 requires the maintenance of a personnel file for each police officer by the director of the civil service commission, including material related to *sustained allegations of misconduct by a police officer*, but specifically prohibits inclusion in that file of information related to *unsustained allegations of misconduct*. Local Gov't Code § 143.089(a)(2), (b). Subsection (g) permits the department to maintain its own file but prohibits release of any information contained in that file, instead requiring the department to refer requestors of information to the civil service director. You represent that it is information in the department's file which is at issue here.

Most of the requested investigations resulted in no disciplinary action being taken against the police officer. However, material included with your request indicates that the allegations of misconduct were sustained on two occasions. We agree that information contained only in the department's own personnel file must be withheld under section 143.089(g). *See also id.* § 143.1214 (department investigatory records pertaining to *unsustained allegations of misconduct* to be released only to another law

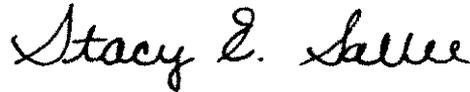
enforcement agency or fire department). *See generally City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied). However, please note that for the two investigations that resulted in disciplinary action against the police officer, section 143.089(a)(2) requires that the department transfer "any letter, memorandum, or document relating to" the disciplinary action to the city civil service commission. These records may not be withheld under section 552.101 of the Government Code but must be released by the civil service commission under section 143.089(f) of the Local Government Code unless some provision of the Open Records Act or other law permits the commission to withhold the documents. Open Records Decision No. 562 (1990); *see also* Local Gov't Code § 143.089(f). Again, the department is required to refer any person who requests information maintained in an officer's personnel file to the civil service commission, which you state you have done by copy of the request letter to this office.

We must now address your claim that sections 552.108 and 552.111 except from disclosure the documents that are contained in the civil service files relating to the internal affairs investigations that resulted in disciplinary actions. Section 552.108(b) excepts from disclosure internal records of a law enforcement agency if their release would unduly interfere with law enforcement. Open Records Decision No. 508 (1988) at 2. You claim that disclosure of the internal affairs investigations "would act to contaminate and disturb the integrity of internal police procedures and investigative techniques necessary to maintain the police department's ability to properly serve and protect the public." You have made no other argument as to how release of this information would unduly interfere with law enforcement. It appears that the "procedures" used here are akin to generally known policies that this office has previously concluded do not meet the section 552.108(b) standard. *See* Open Records Decision No. 531 (1989) at 3. Therefore, the city may not withhold the internal affairs investigations that resulted in a disciplinary action against a police officer under section 552.108(b).

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. The internal affairs investigations that resulted in disciplinary actions against the police officers are internal administrative and personnel matters that are not within the ambit of section 552.111. Therefore, the city may not withhold the documents in the civil service files relating to internal affairs investigations that resulted in disciplinary actions under section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/RHS/ch

Ref.: ID# 34637

Enclosures: Submitted documents

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(w/o enclosures)