



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 22, 1996

Mr. Charles E. Griffith, III
Deputy City Attorney
City of Austin
P.O. Box 1088
Norwood Tower
Austin, Texas 78767-8828

OR96-0767

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28384.

The City of Austin (the "city"), through its police chief, has received a request for the "Internal Affairs report on the investigation of Senior Sgt. J.B. Talley, #297." You seek to withhold the requested information from required public disclosure under section 552.101 of the Government Code.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with section 143.089(g) of the Local Government Code. Section 143.089(g) provides:

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.

In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by a city police department for its use. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. The *City of San Antonio* court, however, did not comment on the availability of information contained in the police officer's civil service file. In cases in which a police department takes disciplinary action against a police officer, section 143.089(a) 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. Open Records Decision No. 562 (1990). See also Local Gov't Code § 143.089(f).

You advise us that, as a consequence of Officer Talley's retirement, the internal affairs investigation at issue here did not result in disciplinary action. Accordingly, the requested file must be withheld from required public disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/ch

Ref.: ID# 28384

cc: Mr. Miguel Salinas
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(w/o enclosures)