



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 19, 1997

Mr. Parker D. Young  
Figari & Davenport  
4800 NationsBank Plaza  
901 Main Street, LB 125  
Dallas, Texas 75202-3796

OR97-0564

Dear Mr. Young:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your requests are ID# 36227 and 36453.

The City of DeSoto (the "city") received a request from a suspended DeSoto police officer for documents concerning his suspension. The city also received a request from another individual for information concerning two different internal investigations. You indicate that both requests cover many of the same records. You have submitted to this office for review "representative samples" of the records at issue.<sup>1</sup> You assert that these records are excepted from disclosure pursuant to sections 552.101, 552.103, 552.108(b), and 552.111.

It is our understanding that the city is subject to chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code allows for the maintenance of two types of personnel files. Section 143.089(a) requires that a civil service file be maintained for each police officer. Section 143.089(g) allows for the maintenance of a separate, internal departmental file in addition to the civil service file provided for in section 143.089(a). This separate departmental file is for the department's own internal use:

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

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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.

Gov't Code § 143.089(g).

Section 143.089(a), (b), and (c) provide for the types of information that must be maintained in the officer's civil service file. Section 143.089(a)(2) of the Local Government Code mandates that documents relating to "any misconduct by the fire fighter or police officer" must be placed in a police officer's civil service file "if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter." It appears that some of these documents may be part of the civil service file.

Section 143.089(e) provides for mandatory access by a police officer for a copy of any of the information in his own civil service file. Therefore, you must release to the requestor who is a police officer copies of the information in his own civil service file. This includes information that was in the internal departmental file but was transferred to the requestor's civil service file pursuant to section 143.089(a)(2). This information must be released to the requestor in accordance with the mandatory access provision of section 143.089(e).

However, any of the documents at issue that are maintained in the department's internal files are confidential pursuant to section 143.089(g) and section 552.101 of the Government Code, which exempts from disclosure information made confidential by law. We note that you have not marked the information to indicate which documents are maintained in the civil service files and which are maintained in the department's internal files. However, a request for information in the internal file must be referred to the civil service director or his designee. See *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied).

The police officer who is requesting information appears to be seeking only information that is in his own civil service file or the department's internal file. You indicate that this officer is appealing his suspension. You may not release to the police officer or the other requestor records in the department's internal file. However, the police officer has an affirmative right of access to his own civil service records.<sup>2</sup>

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<sup>2</sup> We note, however, that some of the information in the records is confidential and may not be released to the public. The home address and home telephone number of a police officer is confidential pursuant to section 552.117 and must therefore be withheld from disclosure.

While the police officer has an affirmative right of access to his own civil service records, no such right of access exists for the other requestor. You did not mark which of the documents are in the department's internal, section 143.089(g) file, but we note again that these documents are confidential and may not be released. As to the unmarked civil service documents, you assert that these records are excepted from disclosure to the second requestor pursuant to section 552.108. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and [a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." However, section 552.108 does not appear to be applicable to the civil service records submitted to this office.<sup>3</sup> Gov't Code § 552.108. See *Holmes v. Morales*, 924 S.W. 2d 920 (Tex. 1996).

You also assert that the civil service records are attorney work-product that is protected from disclosure. This office has issued Open Records Decision No. 647 (1996), which addresses the applicability of section 552.111 to attorney work-product. Since you made your argument prior to this decision, we are returning the documents to you so that you may mark the civil service documents. The civil service documents must be released to the police officer who requested his file, but if you resubmit the civil service records to this office, along with your attorney work-product argument in light of Open Records Decision No. 647 (1996), we will consider the applicability of section 552.111 in regard to the second requestor's access to the records.

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,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 36227

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<sup>3</sup> We note again that you did not mark the records at issue. Thus, we are assuming certain records are civil service records in making this determination.

Enclosures: Submitted documents  
Open Records Decision No. 647 (1996)

cc: cc: Durward Davis  
514 N. Hampton  
DeSoto, Texas 75115  
(w/o submitted documents; w/Open Records Decision No. 647 (1996))

Mr. Paul Pothen  
(w/o enclosures)