



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 12, 1997

Mr. John Steiner  
Division Chief  
Law Department  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-1088

OR97-1087

Dear Mr. Steiner:

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# 32576.

The Austin Police Department ("the department") received a request for all files pertaining to internal or external complaints and disciplinary action filed against two of the department's police officers. In addition, the requestor seeks certain records and transcripts, as well as policy and procedure manuals. You advise us that the department has made much of the requested information available to the requestor. You object, however, to releasing the information relating to internal or external complaints not resulting in disciplinary action. You have submitted a representative sample of this information to us for review and claim that section 552.101 of the Government Code and section 143.089(g) of the Local Government Code exempt it from required public disclosure.<sup>1</sup>

Section 143.089 of the Local Government Code works in conjunction with section 552.101 of the Government Code. Section 552.101 exempts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the police

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<sup>1</sup>In reaching our conclusion here, 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). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

department is required to maintain as part of the police officer's civil service file, and one that the police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g). You state that the department has referred the requestor to the civil service commission for information contained in the police officers' personnel files. Therefore, we assume that the representative sample documents submitted to this office for review are part of the police department's personnel files rather than the civil service files. Therefore, we are considering only those files which may be maintained by the police department for its own internal use under section 143.089(g).

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 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. 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. In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the personnel files maintained under section 143.089(a). Such records may not be withheld under section 552.101 of the act. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6.

It appears from the documents submitted that at least one of the police officers may have been disciplined by the department on at least one occasion. Information maintained by the police department that relates to the investigations that did not result in disciplinary action must be withheld from required public disclosure under section 552.101 of the act in conjunction with section 143.089(g) of the Local Government Code.<sup>2</sup> However, if any of the internal affairs investigations did result in disciplinary action, then "any record, memorandum, or document relating to" the disciplinary action must be placed in the personnel files maintained by the civil service commission under section

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<sup>2</sup>We also note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

143.089(a) and must be released by the civil service commission under section 143.089(f) 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,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/ glg

Ref.: ID# 32576

Enclosures: Submitted documents

cc: Mr. Daryl F. Hart  
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(w/o enclosures)

