



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 5, 1997

Mr. Hugh W. Davis, Jr.
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311

OR97-2662

Dear Mr. Davis:

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# 110840.

The City of Fort Worth (the "city") received a request for the "complete applications (including resumes, statements of intent, supervisor's recommendations, background investigation and notes from oral interviews, etc.) of all the officers who applied for the position of School Liaison Officer." You state that you will release the efficiency rating forms to the requestor. You claim, however, that the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of documents.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You assert that the documents in the application file are confidential personnel files under section 143.089 of the Local Government Code.

Section 143.089 of the Local Government Code provides for the maintenance of a police civil service file and what may be kept in that file:

¹In 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 Nos. 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.

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer 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; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Information that section 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in a police department's internal file, as provided in section 143.089(g):

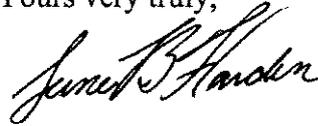
A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter 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.

We recognize that the city might maintain duplicate information in both the department and civil service files. We are unable to determine whether the documents you submitted to us for review are part of the files maintained by the police department under section 143.089(g). If they are, the city must withhold the documents from disclosure under section 552.101 as information deemed confidential by statute.² In the event that the documents submitted to this office are not part of the police department's section 143.089(g) files, they must be released to the requestor.³

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/alg

Ref.: ID# 110840

Enclosures: Submitted documents

cc: Mr. Terry Daffron
Staff Attorney
CLEAT
2001 Beach Street, # 510
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(w/o enclosures)

²We assume that the department complied with the procedural requirements of section 143.089(g) by referring the requestor to the civil service director or the director's designee at the time the request was made.

³We urge the city to exercise caution in releasing the requested information, as portions of the information may be confidential by law. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).