



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 5, 1998

Ms. Regina Atwell
City Attorney
The City of Cleburne
P.O. Box 677
Cleburne, Texas 76033-0677

OR98-0355

Dear Ms. Atwell:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112794.

The Cleburne Police Department (the "department") received a request for the requestor's personnel file. You state that the city is releasing to the requestor his civil service personnel file. Local Gov't Code § 143.089(e). You state that, since the requestor also requested his personnel file from the civil service director, the department considers this request to be for the personnel file maintained by the department, rather than the civil service. You assert that the department's personnel file is excepted from required public disclosure by section 552.101 of the Government Code. You also assert that a certain investigation file is excepted from required public disclosure based on section 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, either constitutional, statutory or by judicial decision. Section 143.089(g) of the Local Government Code reads as follows:

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 [of the civil-service commission] 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.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil-service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] 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." Local Gov't Code § 143.089(g).

We agree that the department must not release the departmental personnel file to the requestor. Gov't Code § 552.101; *see City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

We turn to the investigative file. We observe that one of the documents in the file indicates that on November 7, 1997, pursuant to section 143.056 of the Local Government Code, the officer under investigation was temporarily suspended with pay for a period to extend until thirty days after the matter is disposed of by the courts or until further orders from the police chief. You inform us that criminal charges against the officer are pending and that the prosecuting attorney has instructed you that the department should not release the information.

Section 143.089(a)(2) of the Local Government Code mandates that documents relating to "any misconduct by the . . . police officer" must be placed in the 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." Since the investigative file is related to the alleged misconduct, we assume that the investigative documents are part of the officer's civil service file. Section 143.089(e) states that a police officer "is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file." Section 143.089(e) thus is a mandatory access provision that prevails over the section 552.108 exception from disclosure. *See Open Records Decision No. 598 (1991) at 3-4 (statutes governing access to specific subset of information prevail over generally applicable Open Records Act).* Accordingly, the department must release the investigative file to the requestor in this instance.

We are resolving this matter with this 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 may 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,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 112794

Enclosures: Submitted documents

cc: Mr. Steve Aston
(w/o enclosures)