



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 19, 1998

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager
& Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR98-1979

Dear Mr. Hager:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117614.

The City of Duncanville (the "city") received several requests from a police officer for access to internal affairs investigations involving the officer. You assert that the internal affairs investigation records are protected from disclosure pursuant to section 143.089(g) of the Local Government Code, in conjunction with section 552.101 of the Government Code.

Section 552.101 provides that information is protected from disclosure if it is confidential by law. 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:

(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.

Section 143.089(e) contains a mandatory right of access for a police officer to obtain access to records in that police officer's civil service file.

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.

The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. Although section 143.089(e) contains a mandatory right of access for the civil service file, there is no special right of access for a police officer to review documents in the police department's internal, section 143.089(g) file.

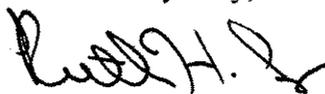
You assert that the records which are responsive to these requests are maintained in the Duncanville Police Department's internal file that is governed by section 143.089(g). Since you assert the records submitted to this office are maintained in the section 143.089(g), internal department file, we agree that the submitted records are confidential and may not be released. As these records are confidential, we need not address your other arguments against disclosure.

Please note, however, that some of the documents submitted to this office contain information concerning what appears to be sustained complaints that resulted in disciplinary action. If a complaint is (1) sustained and (2) disciplinary action is taken pursuant to chapter 143 of the Local Government Code, then section 143.089(a)(2) provides that information about the misconduct must be maintained in a civil service file. Because information about a sustained complaint that resulted in a chapter 143 disciplinary action *must* be maintained in a section 143.089(a)(2) file and *also may* be maintained in a section 143.089(g) file, we assume that the city might maintain duplicate information about sustained complaints in both the *internal, confidential file and the civil service file that is maintained as provided by section 143.089(a)-(c)*. Section 143.089(e) provides the officer with a mandatory right of access to the officer's own civil service file, so if complaint information is maintained in the officer's civil service file, the requestor is entitled to access to those records. We note that when a statute provides for a right of access to information, Open Records Act exceptions to disclosure are inapplicable. Open Records Decision No. 598 (1991).

We note that the requestor has expressed concern to this office that other individuals who are not involved in the internal affairs investigations and otherwise had no right of access to these records were given access to confidential information. This office does not make determinations of fact. We do note that section 552.352 of the Government Code prohibits the disclosure of confidential information, providing that disclosure of confidential information may be a criminal violation and constitutes official misconduct.

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# 117614

Enclosures: Submitted documents

cc: Ms. Marian Brown
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(w/o enclosures)