



July 1, 1999

Mr. Jerry Bruce Cain
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR99-1830

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125700.

The City of Laredo (the "city") received a request for certain records pertaining to a specific internal affairs investigation. You contend that the requested documents are excepted from disclosure pursuant to sections 552.101, 552.102, 552.108, 552.117 and 552.119 of the Government Code. You have supplied the responsive information to this office for review. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You assert that the documents in the requested file are confidential under section 143.089 of the Local Government Code. In relevant part that statute reads:

(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.

...

(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.

You inform us that "the Disciplinary Review Board recommended no disciplinary action against the police officer who is the subject of the complaint." We also note that the file includes the notation "NOT SUSTAINED." Because the complaint did not result in disciplinary action, the file cannot be held in the officer's section 143.089(a) personnel file. Local Gov't Code §§ 143.089(b),(c)(2). We therefore conclude that the requested information is maintained pursuant to section 143.089(g) of the Local Government Code and must be withheld from disclosure under section 552.101 of the Government Code.

Because section 552.101 is dispositive of this request we do not address your arguments raised under other provisions of the 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.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 125700

Encl. Submitted documents

cc: Mr. Julian Delgado
3517 San Eduardo, Apt. #6
Laredo, Texas 78041
(w/o enclosures)