



November 10, 1999

Ms. Elizabeth Dierdorf  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR99-3207

Dear Ms. Dierdorf:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130115.

The City of Fort Worth (the "city") received requests for copies of "all files" and of "all internal files" on the requestor. You indicate that some of the requested information will be released. You seek to withhold six internal affairs files responsive to the request under sections 552.101 and 552.103 of the Government Code.

Section 552.101 requires withholding, *inter alia*, information made confidential by statute. You assert that the information requested is confidential pursuant to section 143.089 of the Local Government Code. Section 143.089 of the Local Government Code provides for the maintenance of a police personnel file and provides what may be kept in that file:

§ 143.089. Personnel File.

(a) The director [of the fire fighters' and police officers' civil service] 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 the 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 sustain 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.

(d) If a negative letter, memorandum, document, or other notation of negative impact is included in a fire fighter's or police officer's personnel file, the director or the director's designee shall, within 30 days after the date of the inclusion, notify the affected fire fighter or police officer. The fire fighter or police officer may, on or before the 15th day after the date of receipt of the notification, file a written response to the negative letter, memorandum, document, or other notation.

(e) The fire fighter or police officer is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file. The municipality may charge the fire fighter or police officer a reasonable fee not to exceed actual cost for any copies provided under this subsection.

(f) The director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

(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. (Emphasis added.)

Local Gov't Code § 143.089.

You advise that the requestor is a city police officer who has been indefinitely suspended and that he is appealing this suspension. Of the six internal affairs files at issue here, five, on their face, relate to conduct for which disciplinary action was taken against the requestor. These files -- 99-204-C, 99-103-C, 99-025-C, 99-228-C, and 98-292-A -- should be considered part of the officer's "personnel file" into which must be placed documents relating to misconduct for which disciplinary action was taken by the city. Local Gov't Code § 143089 (a)(2). Subsection (e) of section 143.089 specifically provides that a police officer is entitled to a copy of any document placed in the personnel file, for which he may be charged a reasonable fee not to exceed actual costs. Thus copies of the information in these five files must be made available to the requestor under subsection (e).<sup>1</sup>

We are unable to determine from the submitted information whether the investigation to which the remaining file at issue, 99-067-A, relates, led to disciplinary action, and thus whether that file should be considered a part of the personnel file under section 143.089. If no disciplinary action was taken, the information in file 99-067-A may not, pursuant to subsection (b) of section 143.089, be placed in the personnel file. Similarly, pursuant to subsection (c) of section 143.089, if disciplinary action was taken but the city civil service commission subsequently determined that the action was taken without just cause or that there was insufficient evidence to support the charge of misconduct, information pertaining to such conduct must be removed from the personnel file. However, if such disciplinary action was taken and not later found to be without just cause or based on insufficient evidence, file 99-067-A is part of the personnel file, copies of which must be made available to the requestor pursuant to subsection (e) of section 143.089, as discussed above.

---

<sup>1</sup>Since we have determined that subsection (e) specifically requires the release to the requestor of the files for which you also claimed the protection of section 552.103 of the Government Code, we need not further address your section 552.103 claim. We caution with respect to the files for which we have determined you must release copies to the requestor pursuant to subsection (e), that those files may contain information which is otherwise confidential. The requestor's further disclosure of such confidential information may subject him to criminal penalties. See Gov't Code § 552.352

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

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. If, as discussed above, file 99-067-A may not be placed in the personnel file pursuant to subsections (b) and (c), it should be considered part of the subsection (g) department file. As such it would be confidential under the *City of San Antonio* ruling and must be withheld.

We note, finally, that the submitted information contains information which must be withheld under section 552.130, which provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

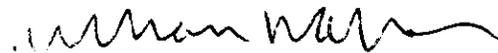
(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

The submitted records contain license plate and VIN numbers that are made confidential under section 552.130. We have marked the kind of information you must withhold under section 552.130.

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,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ljp

Ref: ID# 130115

Encl. Submitted documents

cc: Mr. Christopher Armstrong  
4605 Virgil Street  
Fort Worth, Texas 76119  
(w/o enclosures)