



November 22, 1999

Mr. Dan T. Saluri
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR99-3348

Dear Mr. Saluri:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129724.

The Lubbock Police Department (the "department") received a request for information relating to any complaints or disciplinary action against, or commendations or awards given to, a named police officer. You state that some of the information will be provided to the requestor. You contend that the remaining requested information is made confidential pursuant to section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. You also claim an exception under section 552.108 of the Government Code for the portion of the remaining information which is related to criminal investigations.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Lubbock is such a city. Section 143.089 of the Local Government Code provides for the creation of two personnel files for police officers: one that is maintained by the city's civil service director and the other by the city police department.

Section 143.089 describes what may and what may not be kept in the director's personnel 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.

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

(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.

In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court 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. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied) (in construing Local Gov't Code § 143.089 the court found general legislative policy that allegations of misconduct against police officers and fire fighters not be subject to compelled disclosure unless they have been substantiated and resulted in disciplinary action).

You assert that the responsive documents are maintained in the department's internal file. You inform this office that the information you seek to withhold relates to "the Internal Affairs Division file relating to allegations of misconduct pending, not sustained, or not resulting in disciplinary action" and that the criminal investigation reports included as responsive are included "as a part of the Internal Affairs records." As such, under section 143.089(g), the submitted records are confidential and may not be disclosed at this time.

Information contained in personnel files held by the civil service director, including all records relating to misconduct by police officers that resulted in disciplinary action must be released to the public unless the information comes within one of the Public Information Act's exceptions to required public disclosure. You state that a copy of the director's file is being provided to the requestor.

We presume that the department has released any other information responsive to the request but not included in the department's internal file and not submitted to this office to review. Additionally, if information is responsive to the request and exists both in the department's internal file and independently of that file, the department may not engraft section 143.089's confidentiality to those documents.

Because our conclusion under section 143.089 is dispositive, we do not address your claimed exception under section 552.108. 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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/jc

Ref: ID# 129724

Encl. Submitted documents

cc: Ms. Susan Johnson
4317 Springbrook
Odessa, Texas 79762
(w/o enclosures)