



January 22, 2001

Mr. Steven M. Kean
Senior Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR2001-0224

Dear Mr. Kean:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID # 143420.

The City of Tyler (the "city") received a request for information pertaining to a former employee of the Tyler Police Department, including information relating to that individual's resignation, past internal investigations, and any disciplinary actions. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 protects information that is confidential under other statutes, such as section 143.089 of the Local Government Code. Section 143.089 provides for the creation and maintenance of two different types of personnel files, including one that must be maintained as part of a police officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The civil service file must contain certain specified items, including commendations, periodic evaluations by the officer's supervisor, *and documents relating to any misconduct in any instance in which the department took disciplinary action against a fire fighter or a police officer.* *See* Local Gov't Code § 143.089(a). Documents relating to alleged

misconduct or disciplinary action must be removed from the officer's civil service file, however, if the police department determines that the charge of misconduct was not supported by sufficient evidence or that the disciplinary action was taken without just cause. See Local Gov't Code § 143.089(b), (c). Thus, subsections (a)-(c) of section 143.089 limit the contents of the civil service file.

Subsection (g) of section 143.089 authorizes but does not require the police department to maintain, for its own use, a separate and independent internal departmental personnel file relating to a police officer. Section 143.089(g) provides 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 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). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed the applicability of section 143.089(g) to a request for information contained in a police officer's personnel file maintained by the city police department for its own use. The records included in the departmental file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) makes records contained in the departmental file confidential. See *City of San Antonio*, 851 S.W.2d at 949 (concluding that "the legislature intended to deem confidential the information maintained by the . . . police department for its own use under subsection (g)"). The court stated that the provisions of section 143.089 governing the contents of the civil service file reflect "a legislative policy against disclosure of unsubstantiated claims of misconduct made against police officers and fire fighters, except with an individual's written consent." *Id.* Thus, in those instances in which a police department takes disciplinary action against a police officer, section 143.089(a)(2) requires that records relating to the investigation and disciplinary action be placed in the personnel files maintained under section 143.089(a). The records encompassed by section 143.089(a) are subject to public disclosure under the Public Information Act, unless an exception to their disclosure is shown to be applicable. See Local Gov't Code § 143.089(f); *City of San Antonio*, 851 S.W.2d at 948-49; Open Records Decision No. 562 at 6 (1990). Section 143.089(g) provides that a police department that receives a request for information relating to an officer "may not release any information contained in the department file" maintained under section 143.089(g) and must "refer to the director [of the civil service commission] a person or agency that requests information that is maintained in the . . . police officer's . . . personnel file." See also *City of San Antonio*, 851 S.W.2d at 949.

In this instance, you inform us that the city is a civil service city and that the officer in question was a civil service employee. You state that the submitted information represents "a personnel file maintained by the Tyler Police Department for the department's use within the meaning of . . . Local Government Code Section 143.089(g)." You state that it is the city's position that it is prohibited by section 143.089(g) of the Local Government Code from releasing any of the submitted information. Based on your representations and our review of the information in question, we conclude that it is confidential under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Therefore, the submitted information must not be released to the requestor. As we are able to make this determination, we need not consider your arguments under sections 552.108 and 552.117.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

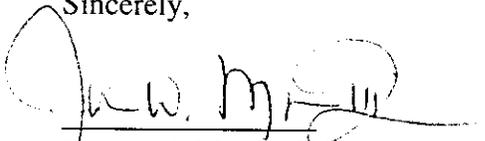
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/seg

Ref: ID# 143420

Encl. Submitted documents

cc: Ms. Ann Jeanette Brown
KETK-TV NBC 56 News
4300 Richmond Road
Tyler, Texas 75703
(w/o enclosures)