



May 30, 2002

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2002-2913

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163644.

The City of Austin Fire Department (the “department”) received a request for information relating to the suspension of a firefighter and to the investigation that led to the suspension. The department claims that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted. We also have considered comments that we received from an attorney for the requestor. *See* Gov’t Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that another statute makes confidential. The department raises section 552.101 in conjunction with section 143.089 of the Local Government Code.¹ Section 143.089 provides for the existence of two different types of personnel files relating to a fire fighter, including one that must be maintained as part of the fire fighter’s civil service file and another that the fire 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 fire fighter’s supervisor, and documents relating to any misconduct in any instance in which the employing department

¹You inform us that the City of Austin is a civil service municipality under chapter 143 of the Local Government Code.

took disciplinary action against the fire fighter under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. Documents relating to alleged misconduct or disciplinary action taken must be removed from the fire fighter's civil service file if the fire department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See id.* § 143.089(b)-(c).

Subsection (g) of section 143.089 authorizes the fire department to maintain for its own use a separate and independent internal personnel file relating to a fire fighter. 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.

Id. § 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 information contained in a fire fighter's personnel file maintained by a fire department for its use. The court determined that section 143.089(g) makes such information confidential. *See* 851 S.W.2d at 949 (concluding that legislature intended to deem confidential information maintained by fire department for its own use under Local Gov't Code § 143.089(g)). The court stated that the provisions of section 143.089 governing the content 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, if a fire department takes disciplinary action against a fire fighter under chapter 143 of the Local Government Code, section 143.089(a)(2) requires that records relating to the investigation and disciplinary action be placed in the fire fighter's civil service file under section 143.089(a). The records encompassed by section 143.089(a) are subject to public disclosure under chapter 552 of the Government Code, unless an exception to disclosure is shown to apply. *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 department that receives a request for information relating to a fire fighter "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 fire fighter's . . . personnel file." *See also City of San*

Antonio v. San Antonio Express-News, 47 S.W.3d 556 (Tex. App. – San Antonio 2000, no pet. h.) (restricting confidentiality under section 143.089(g) to “information reasonably related to a police officer’s or fire fighter’s employment relationship”); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files).

The department states that the requested information is part of a personnel file that the department maintains with regard to a fire fighter. The department asserts that the information in its personnel file is confidential under section 143.089(g) of the Local Government Code. The department has referred the requestor to the director of the Austin Firefighters Civil Service Commission or her designee. We note that the requested information relates to a suspension of the fire fighter, which is a disciplinary action under chapter 143 of the Local Government Code. *See* Local Gov’t Code § 143.052. Therefore, this information must also be part of the fire fighter’s civil service file under section 143.089(a), unless the department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See id.* § 143.089(a)(2), (b)-(c). We agree, however, that the information contained in the department’s personnel file is confidential under section 143.089(g) of the Local Government Code and thus must be withheld from disclosure under section 552.101 of the Government Code. As we are able to make this determination, we need not address the department’s claims under sections 552.103 and 552.107.

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

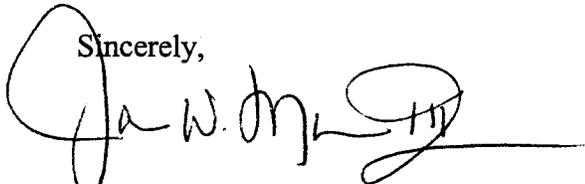
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 163644

Enc: Submitted documents

c: Mr. B. Craig Deats
Attorney for James Calahan
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(w/o enclosures)