



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 28, 2003

Mr. John D. Armstrong
Askins & Armstrong, P.C.
City of LaPorte
P. O. Box 1218
La Porte, Texas 77572-1218

OR2003-0589

Dear Mr. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175741.

The LaPorte Police Department (the "department"), which you represent, received a request for eleven categories of information pertaining to a specified department officer. You state that you have provided the requestor with some responsive information. You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with section 143.089 of the Local Government Code.¹ Section 143.089 provides in pertinent part:

- (a) The director [of the fire fighters' or 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 Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. See Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

- (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

....

- (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.

Local Gov't Code § 143.089(a), (g).

Section 143.089 contemplates two different types of personnel files, one that the city is required to maintain as part of the officer's civil service file, and one that the 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 documents relating to any misconduct in those cases where the department took disciplinary action against the officer. *See id.* § 143.089(a)(2). We note that chapter 143, subchapter D prescribes the following types of disciplinary actions: removal, suspension, demotions, and uncompensated duty. *See* Local Gov't Code §§ 143.051 - .055. Information contained in personnel files maintained by the civil service director in accordance with chapter 143, including all records from the employing police department 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 disclosure.

Subsection (g) authorizes, but does not require, the department to maintain for its use a separate and independent internal personnel file on an officer. Documents relating to any alleged misconduct or disciplinary action taken must be removed from the civil service file if 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(b), (c). Information that reasonably relates to an officer's employment relationship with the

department and that is maintained in a department's internal file pursuant to section 143.089(g) is confidential and must not be released. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.-- San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the department for its use and addressed the applicability of section 143.089(g) to that file. In that case, the records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. *See id.* The court determined that section 143.089(g) made these records confidential. *See id.* at 949.

You state that the submitted information constitutes three separate complaint cases pertaining to the specified officer that are located in the department's personnel file for the officer. You also state that the complaints were determined to be unsustainable in two of these cases. You further state that, although the basis of one of two allegations contained within the third case was sustained, no disciplinary action was taken against the officer regarding this case. Accordingly, we conclude that the department must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

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).

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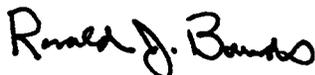
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

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Enc. Submitted documents

c: Mr. John W. Armstrong III
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(w/o enclosures)