



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 1, 2003

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2003-2210

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178629.

The City of Fort Worth (the "city") received a written request for documents regarding the salary, performance evaluations, and complaints filed against four named police officers.¹ You indicate that some of the responsive information has been released to the requestor. You contend, however, that to the extent the requested information regarding complaints against the police officers is contained in an internal police department file, a representative sample of which you submitted to this office, the information is excepted from required disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code.²

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, *statutory*, or by

¹You state that the requestor amended his original request, apparently to exclude some other previously requested information.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. We further assume for purposes of this ruling that, although not apparent to us, all of the submitted records in fact are responsive to the request.

judicial decision.” (Emphasis added.) Section 143.089 of the Local Government Code provides for the maintenance of civil service files and what may be kept in those files:

(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:

....

(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*

....

(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. [Emphasis added.]

Information that subsections 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in the police department’s internal files, as provided in section 143.089(g). This subsection provides:

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.]

The city's police department may keep information in these separate, internal files for its own use. Section 143.089(g) makes records kept in the police department's internal files confidential. *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. (Tex. App.—Austin 1993, writ denied).

Chapter 143 addresses the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov't Code §§ 143.051-.055. Most of the records you submitted to our office do not reflect a disciplinary action as contemplated under chapter 143. Accordingly, we conclude that most of the submitted records must be maintained in the city's police department's confidential internal file and therefore must be withheld from the public pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

We note, however, that one of the documents you submitted to this office contains information that reflects a disciplinary action of a five-day suspension of one of the named police officers. Although the information pertaining to the sustained disciplinary action is maintained in the department's internal personnel file and is therefore confidential under section 143.089(g), that same information, as well as all supporting documentation, must be placed in the officer's civil service personnel file. Local Gov't Code § 143.089(a)(2). We have marked the information in this document must be kept only in the department's internal file and thus must be withheld from the public pursuant to section 143.089(g). The remaining information in this document must also be kept in the civil service personnel file and thus must be released to the requestor.

Although you request that this office issue the city a "previous determination" regarding the applicability of section 143.089(g), we decline to do so at this time. 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 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).

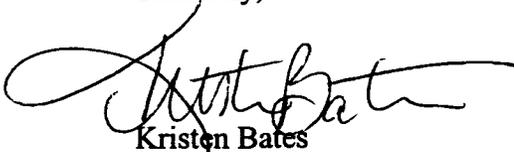
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/RWP/seg

Ref: ID# 178629

Enc: Submitted documents

c: Mr. Chance Oliver
Hayes, Coffey & Berry
P.O. Box 50149
Denton, Texas 76206
(w/o enclosures)