OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 27, 2003

Mr. Thomas H. Arnold
City Attorney
City of Texarkana
P.O. Box 1967
Texarkana, Texas 75504

OR2003-3554

Dear Mr. Arnold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181568.

The City of Texarkana (the "city") received a request for "copies of the personnel files of [a named officer's] work history at the Texarkana, Texas Police Department." You state that "[d]ocuments relating to [the] officer's commendation, congratulation, and honors, misconduct resulting in disciplinary action against the officer by the department, and periodic evaluations by superiors which are maintained in the officer's civil service file pursuant to § 143.089(a) have been disclosed." You claim that all remaining responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 section encompasses information deemed confidential by statute. In this regard, we note at the outset that a few of the documents you submitted to this office consist of medical records that are made confidential under the Medical Practice Act (the "MPA"), Occ. Code §§ 151.001 *et. seq.* Section 159.002 of the Occupations Code provides in pertinent part:

> (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

> (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). The medical records we have identified must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). For your convenience, we have marked the documents that are medical records subject to the MPA.

We now address your contentions regarding the applicability of section 143.089 of the Local Government Code. You state that the city has adopted chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that a city's civil service director is required to maintain, and an internal file that a police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police officer is subject to disciplinary action under chapter 143, section 143.089(a)(2) requires that records relating to the investigation and disciplinary action be placed in the officer's civil service file maintained under section 143.089(a). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See id.* §§ 143.051-.055. Records maintained as part of an officer's civil service file are subject to release under chapter 552 of the Government Code. *See City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 948-49 (Tex. App.–Austin 1993, writ denied).; *see also* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *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 at 949.

You inform us that the city maintains two files on each police officer: (1) a civil service file maintained as required by Local Government Code section 143.089(a); and (2) an internal personnel file maintained by the police department, as permitted by Local Government Code section 143.089(g). You also indicate that you keep what is essentially a third file, which is

maintained in the city's personnel office (the "personnel office file") containing information regarding wages and other administrative matters.

You state that the information contained in the personnel office file, which you have submitted as Exhibit C "relate[s] to the officer's relationship with the department and [is] not recognized as or intended to be a formal part of the officer's civil service file." You assert that these documents "are personnel records for the [police] department's use which, because they do not meet the character standard criteria for inclusion in the officer's civil service personnel file . . . are properly a part of the departmental personnel file under § 143.089(g), are protected as confidential, and should be considered excepted from disclosure under section 552.101 . . . ."

We find the maintaining of three files to be contrary to the purpose and legislative intent of section 143.089. As noted above, section 143.089 contemplates the existence of only two personnel files concerning a particular police officer. Documents relating to commendations, periodic evaluations by the officer's supervisor, and misconduct that resulted in disciplinary action against the officer under chapter 143 of the Local Government Code must be held in the civil service file and are subject to public disclosure under chapter 552 of the Government Code. *See* Local Gov't Code § 143.089(a)(1)-(2). Documents that relate to unsustained allegations of misconduct or disciplinary action taken without just cause must be held in the police department's confidential section 143.089(g) file. The maintenance of a third file, the contents of which are subject to public disclosure under chapter 552 of the Government Code, is contrary to the city's election to be governed by chapter 143 of the Local Government Code and to the legislative purpose of section 143.089. *See also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (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).

As noted above, you indicate that the requestor has already received the named officer's civil service file. You assert that the department's personnel file, which you have submitted as Exhibit B, is maintained pursuant to section 143.089(g). Based on this representation, we find that this file is confidential and must therefore be withheld pursuant to section 552.101 of the Government Code.[1] You also assert that the personnel office file is maintained "*for the [police] department's use*" and indicate that it contains certain information related to the officer's employment relationship with the department. Because the personnel office file is not maintained as a civil service file, it must be included as a part of the department

[1]We note that among these records are evaluations, letters of commendation, and records pertaining to sustained disciplinary action against the officer as set forth in sections 143.051through 143.055. We assume all of these documents are also contained in the officer's civil service file that was released to the requestor.

personnel file. Accordingly, we conclude that the personnel office file must also be withheld pursuant to section 552.101.

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).

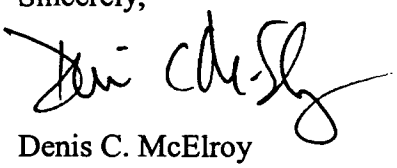
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 181568

Enc. Submitted documents

c: Ms. Lisa Bose McDermott
Texarkana Gazette
P.O. Box 621
Texarkana, Texas 75504
(w/o enclosures)