



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2005

Mr. Larry Schenk
City Attorney
City of Paris
P. O. Box 9037
Paris, Texas 75461-9037

OR2005-05794

Dear Mr. Schenk:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 227077.

The City of Paris (the "city") received a request for information related to the recommendation of the city's fire chief to the city's civil service commission (the "commission") that a specified city firefighter be demoted. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes orders of the city's civil service commission. Also included in the submitted information are a notice of an open meeting of the commission and minutes of that open meeting. Section 143.011 of the Local Government Code provides that "[e]ach rule, opinion, directive, decision, or order issued by the commission must be written and constitutes a public record the commission shall retain on file." Local Gov't Code § 143.011(c). Accordingly, the commission's orders may not be withheld from disclosure under the Act. *See* Open Records Decision No. 221 at 1 (1979) ("official records of the public proceedings of a governmental body are among the most open of records"); *see also* Open Records Decision No. 551 at 2-3 (1990) (laws or ordinances are open records). Additionally, section 551.022 of the Open Meetings Act, chapter 551 of the Government Code, expressly provides that the "minutes and tape recordings of an open

meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee." Gov't Code § 551.022. Furthermore, section 551.041 of the Open Meeting Act provides "[a] governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body." Gov't Code § 551.041. Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under chapter 552 of the Government Code. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976).

You also claim that these records are confidential under section 143.089(g) of the Local Government Code. Generally, all information maintained pursuant to section 143.089(g) is confidential. Thus, in this instance, there would be a conflict of laws between section 143.089(g) and the public availability provisions relating to the marked order, open meeting minutes, and notice of an open meeting. *See* Local Gov't Code § 143.011(c); Gov't Code §§ 551.022., .041. However, where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). The public availability provisions at issue are more specific than the general confidentiality provision in section 143.089(g). *See also* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision). Thus, the commission may not withhold the marked order, open meeting minutes, or notice of an open meeting under section 143.089(g). These marked documents must be released. We now address whether the remaining submitted information is confidential under section 143.089(g) and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 143.089(g) of the Local Government Code. You inform us the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a file that must be maintained by the city's civil service director or the director's designee, and another file that may be maintained by the city's fire department for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a fire department investigates a firefighter's misconduct and takes disciplinary action against the firefighter, section 143.089(a)(2) requires the department to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the firefighter's civil service file maintained under section 143.089(a). *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code

§§ 143.051-143.055. All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or in possession of the department because of its investigation into a firefighter’s misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under chapter 552 of the Government Code. *See* Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a fire department’s internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You explain that city’s fire chief has recommended that the firefighter at issue be demoted following an investigation into the firefighter’s alleged misconduct. All investigatory materials in an investigation resulting in a demotion must be forwarded to the commission for placement in the firefighter’s civil service personnel file maintained pursuant to section 143.089(a). *See* Local Gov’t Code § 143.089(a); *Abbott v. City of Corpus Christi*, 109 S.W.3d at 122. However, you also explain that the investigation at issue had not resulted in the firefighter’s demotion at the time the city received the present request. You indicate that, at the time the city received the present request, the remaining submitted information was maintained by the city’s fire department pursuant to section 143.089(g) and was not part of the firefighter’s civil service personnel file. Therefore, based on your representations and our review of the information at issue, we find the remaining submitted information to be confidential under section 143.089(g) and it must be withheld under section 552.101 of the Government Code.

In summary, the city must release the marked order, open meeting minutes, or notice of open meeting. The remaining submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.¹

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

¹ As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/jev

Ref: ID# 227077

Mr. Larry Schenk - Page 5

Enc. Submitted documents

c: Mr. Charles Richards
The Paris News
P. O. Box 1078
Paris, Texas 75461
(w/o enclosures)