



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 6, 2006

Ms. Leann D. Guzman  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2006-03444

Dear Ms. Guzman:

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# 245760.

The Fort Worth Police Department (the "department") received a request for the internal investigations and disposition of allegations for a named department officer, as well as other specific information regarding the named officer. You state that you will release some of the requested information to the requestor. You claim, however, that the submitted 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." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 143.089 of the Local Government Code. We understand that the City of Fort Worth is a civil service city under 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 the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g).

In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) 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 police officer's civil service file maintained under section 143.089(a).<sup>1</sup> *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). 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 police officer'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* Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to a police 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 a police 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. Tex. Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us that the submitted information is maintained in the department's internal files concerning this officer pursuant to section 143.089(g). Based on your representations and our review of the records at issue, we agree that this information is confidential pursuant to section 143.089(g) of the Local Government Code.<sup>2</sup>

We note that the requestor has submitted a release signed by the officer in question. In some circumstances, a requestor may have a special right of access to information that is otherwise confidential. Section 552.023 of the Government Code states in relevant part:

- (a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a

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<sup>1</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143.

<sup>2</sup>We note that the submitted documents include information that is required to be placed in the civil service commission's personnel files under section 143.089(a) of the Local Government Code because it relates to an investigation that resulted in disciplinary action of an officer under by chapter 143, as well as to commendations, congratulations, or honors bestowed on the police officers by a member of the public or by the employing department. Furthermore, section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

Gov't Code § 552.023. In this instance, however, the submitted information is confidential under section 143.089(g) of the Local Government Code for reasons other than the protection of the named officer's privacy interests. In addition, this office has interpreted section 143.089 to grant a right of access only to the information in the civil service personnel file maintained under section 143.089(a). *See* Open Records Decision No. 650 at 3 (1996) (confidentiality provision of section 143.089(g) contains no exceptions). Therefore, the requestor does not have a special right of access to any portion of the submitted information, and it must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 143.089 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).

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); *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 Office of the Attorney General 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. 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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 245760

Enc. Submitted documents

c: Mr. Ken Bersano  
c/o Leann D. Guzman  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102  
(w/o enclosures)