



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2009

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
402 North Second Street
Killeen, Texas 76541-5298

OR2008-02252

Dear Ms. Mapes:

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# 335405.

The City of Killeen (the "city") received a request for all information that the city may have pertaining to the requestor. You state that you have released some of the information to the requestor. You claim 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 deemed confidential by statute, such as section 143.089 of the Local Government Code. You state that 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 police officer's civil service file that the 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 an officer's misconduct and takes disciplinary action against the 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 officer's civil service file

maintained under section 143.089(a).¹ *Abbott v. 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.* at 120, 122. 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 police department’s internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted information is maintained in the city’s internal file concerning this officer. Based on your representations and our review of the submitted information, we conclude that section 143.089(g) of the Local Government Code is applicable to the submitted information.²

We note that in this instance the requestor has submitted a release authorization signed by the officer at issue. However, although section 143.089(e) provides officers a right of access to their own civil service file maintained under section 143.089(a), this office has determined that officers do not have a right to their own internal file maintained by a police department pursuant to section 143.089(g). *See* Open Records Decision No. 650 at 3 (1996) (confidentiality provision of section 143.089(g) contains no exceptions). Thus, because the records at issue are maintained in the city’s internal file pursuant to section 143.089(g), the requestor does not have a right of access to these records under section 143.089.

We also note that although section 552.023 of the Government Code grants a person’s authorized representative a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests, confidentiality under section 143.089(g) is not privacy based. Thus, because the submitted records are maintained pursuant to section 143.089(g), the right of access under section 552.023 does not apply this information. Finally, the requestor has not pointed us to any other law providing the requestor with a right of access to this information. Thus, the city must withhold the submitted records under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

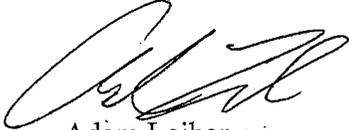
¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-143.055.

²Section 143.089(g) requires a police or fire 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.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/jb

Ref: ID# 335405

Enc. Submitted documents

c: Requestor
(w/o enclosures)