



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2009

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-04366

Dear Mr. Bounds:

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# 340328.

The City of Corpus Christi (the "city") received a request for information related to a specified internal investigation. You claim 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.

Initially, we note that the requestor excluded from the request, among other things, "family information of current and former employees[.]" Thus this information, which we have marked, is not responsive to the present request. Accordingly, we do not address this information, and it need not be released.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information that is made confidential by statute. Gov't Code § 552.101. You assert the submitted information is subject to section 143.089 of the Local Government Code, which 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). We note that the city is a civil service city under chapter 143 of the Local Government Code.

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).¹ *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* Local 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. *Id.* § 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).

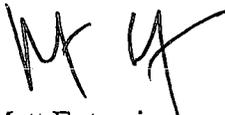
You indicate the submitted information is contained in the city police department's personnel file of the officer involved and that this information is maintained under section 143.089(g). We note the information you seek to withhold relates to an investigation of misconduct that resulted in suspension of the officer at issue. Therefore, this information is subject to section 143.089(a)(2) and must also be maintained in the officer's civil service file under section 143.089(a). As previously noted, this information is subject to release. *See* Local Gov't Code § 143.089(f); ORD 562 at 6. In this instance, the request was received by the city, which has access to the files maintained under sections 143.089(a) and 143.089(g); therefore, the request encompasses both of these files. Thus, none of the submitted information may be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. As you raise no other exceptions to disclosure, the submitted responsive information must be released to the requestor.

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.

¹Chapter 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.

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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 340328

Enc. Submitted documents

c: Requestor
(w/o enclosures)