



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2009

Ms. Julia Gannaway
Lynn Pham & Ross, L.L.P.
306 West Broadway Avenue
Fort Worth, Texas 76104

OR2009-05316

Dear Ms. Gannaway:

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# 341008.

The City of Palestine (the "city"), which you represent, received a request for the departmental file, including training records, of a named probationary police officer. 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 representative sample of information.¹

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. 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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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).² *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 police department'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, and it must be withheld under section 552.101 of the Government Code on that basis.³

In this instance the requestor is the officer at issue. 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 police department'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.

Finally, you ask this office to issue a previous determination allowing the city to withhold personnel information pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination);

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055.

³Section 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.

Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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 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,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/jb

Ref: ID# 341008

Enc. Submitted documents

c: Requestor
(w/o enclosures)