



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 10, 2009

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2009-07953

Dear Ms. Byles:

~~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# 345822 (Fort Worth PIR No. 2731-09).~~

The Fort Worth Police Department (the "department") received a request for the employment records of a named 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 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 section 143.089 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). The police officer's civil service file must contain specific items, including commendations, periodic evaluations by the officer's supervisor, and documents from the employing department relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *See id.* § 143.089(a)(1)-(2). In cases in which a police department investigates an 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* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to an 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 personnel 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 Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied).

You inform us that the City of Fort Worth is a civil service city under chapter 143 of the Local Government Code. You assert that the submitted information is maintained in the officer's departmental personnel file. Thus, section 143.089(g) is applicable. In this instance, the Saginaw Police Department (“Saginaw”) is the requestor. We note Saginaw has submitted an authorization and release form 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 department's internal file pursuant to section 143.089(g), Saginaw 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 to this information. Furthermore, the interagency transfer doctrine cannot operate to allow the

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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.

department to transfer the confidential information to Saginaw. *See* ORD 650 at 3-4 (concluding that absent a federal law requiring the disclosure of information that is confidential pursuant to section 143.089(g), a city police department may not disclose such information to a federal law enforcement agency as a permissible interagency transfer); *see also* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986); Open Records Decision No. 655 (1997). Therefore, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 345822

Enc. Submitted documents

c: Requestor  
(w/o enclosures)