



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 26, 2009

Mr. Brandon Shelby
City Attorney
City of Sherman
P.O. Box 1106
Sherman, Texas 75091-1106

OR2009-08858

Dear Mr. Shelby:

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# 347064.

The City of Sherman (the "city") received a request for information relating to (1) internal affairs investigations concerning the requestor, in which the requestor was a witness; and (2) specific internal affairs investigation in which the requestor has been involved from April 2006 to April 7, 2009. You state that the city is releasing some of the requested information to the requestor. 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

Initially, we note that the city sent the requestor an estimate of the cost of providing the requested information. See Gov't Code §§ 552.2615(a), 552.263(f). You have informed us that you have not received a response to the cost estimate. *See id.* § 552.2615(a)(2) (request automatically withdrawn if requestor does not respond to itemized estimate of charges).

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.

However, we have examined the cost estimate and determined that it does not comply with the provisions of section 552.2615 of the Act because it does not inform the requestor that inspection of the records would be a less costly method of obtaining the information. *See id.* § 552.2615(a). Accordingly, we conclude the requestor's public information request has not been withdrawn by operation of law.

Next, we note that portions of the submitted information, which we have marked, were the subject of a previous request for information in response to which this office issued Open Records Letter No. 2008-10411 (2008). As we have no indication that the law, facts, and circumstances on which this prior ruling was based have changed, the city must continue to rely on this ruling as a previous determination and dispose of this information in accordance with Open Records Letter No. 2008-10411. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will now address your arguments under section 552.101 of the Government Code for the remaining information at issue.

Section 552.101 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, including section 143.089 of the Local Government Code. We understand the City of Sherman to be a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a fire fighter's civil service file that a city's civil service director is required to maintain, and an internal file that the fire department may maintain for its own use. *See* Local Gov't Code § 143.089(a), (g).

In cases in which a fire department investigates a fire fighter's misconduct and takes disciplinary action against the fire fighter, 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 fire fighter's civil service file maintained under section 143.089(a).² *See 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 fire fighter's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *See id.* Such records are subject to release

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. An oral or written reprimand does not constitute discipline under chapter 143.

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 fire fighter's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. *See Id.* § 143.089(b). Information that reasonably relates to a fire fighter's employment relationship with the fire department and that is maintained in the fire department's internal file pursuant to section 143.089(g) is confidential and must not be released.³ *See 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, 949 (Tex. App.—Austin 1993, writ denied).

You indicate that the information you have marked is maintained in the fire department's internal files created pursuant to section 143.089(g). Based on our review, we agree the city must generally withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

However, we note that one of the submitted documents, which we have marked, relates to disciplinary action taken against a firefighter that must be maintained in the fire fighter's civil service file pursuant to section 143.089(a). As such, the requestor, as the fire fighter to whom the memorandum pertains, has a statutory right of access to this information under section 143.089(e).⁴ *See* Local Gov't Code § 143.089(e).

In summary, the city must rely on our ruling in Open Records Letter No. 2008 -10411 (2008) as a previous determination and dispose of the information we have marked in accordance with that ruling. The city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code, with the exception of the document we have marked, which must be released to the requestor pursuant to section 143.089(e) 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.

³We note that section 143.089(g) requires a 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.

⁴We note that although section 143.089(e) provides fire fighters a right of access to their own civil service file maintained under section 143.089(a), this office has determined that fire fighters do not have a right to their own internal file maintained by a fire 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).

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/dls

Ref: ID# 347064

Enc. Submitted documents

c: Requestor
(w/o enclosures)