



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2009

Ms. Cary Grace
Assistant City Attorney
City of Austin, Law Department
P.O. Box 1088
Austin, Texas 78767-8828

OR2009-09004

Dear Ms. Grace:

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# 348421.

The Austin Police Department (the "department") received a request for: (1) the personnel files for five specified department officers; (2) the department's "standard operating procedures for dealing with a victims/perpetrators, who are in dire straits of medical attention[;]" and (3) the incident report from a specified incident. You state that the City of Austin Civil Service Commission will release "all information in its possession." You claim that the remaining information at issue 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 the information at issue.¹

Initially, we note that you have not submitted any information responsive to item (2) or item (3) of the request. Therefore, to the extent the department maintained any information responsive to these items on the date the department received the request, we assume the

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.

department has already released such information. If the department has not released any such information, it must do so at this time. *See* Gov't Code § 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply, it must release information as soon as possible).

We next consider your arguments against disclosure of the remaining information at issue, which is responsive to item (1) of the request. 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. Section 552.101 encompasses information made confidential by other statutes, including section 143.089 of the Local Government Code. Section 143.089 applies to cities, including Austin, that are civil service cities under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files for a police officer: a civil service file that the city civil service director is required to maintain, and an internal file that the police department may maintain for its own use. *See* Local Gov't Code § 143.089(a), (g). In cases in which a police department investigates alleged misconduct by a police officer and takes disciplinary action against the police officer, it is required by section 143.089(a)(2) of the Local Government Code 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 pursuant to section 143.089(a). *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 police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service file for the disciplined police officer. *See id.* Chapter 143 of the Local Government Code prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. Such records are subject to release under the Act. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document related to alleged misconduct by a police officer may not be placed in that officer's civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. *See* 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 the police department's internal file pursuant to section 143.089(g) is confidential and must not be released.² *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *see also City*

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.

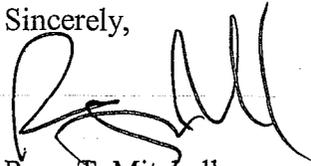
of San Antonio v. Tex. Attorney Gen., 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted information is maintained in the department's internal personnel files pursuant to section 143.089(g). However, we note that a portion of the submitted information, which we have marked, relates to investigations that resulted in disciplinary action, as defined in chapter 143, against the involved officers. This information is subject to section 143.089(a)(2) of the Local Government Code, and must also be included in the involved officers' civil service files, which you state will be released to the requestor. Nevertheless, based on your representations and our review, we agree that the submitted information is confidential under section 143.089(g) of the Local Government Code. Therefore, the city must withhold this information pursuant to section 552.101 of the 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, 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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 348421

Enc. Submitted documents

cc: Requestor
(w/o enclosures)