



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 24, 2009

Ms. Michelle L. Villarreal  
Assistant City Attorney  
City of Waco Legal Services  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2009-11880

Dear Ms. Villarreal:

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# 353226 (LGL-09-586).

The City of Waco (the "city") received a request for information pertaining to a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions 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 information protected by other statutes, including section 143.089 of the Local Government Code. We understand the city 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).<sup>1</sup> 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 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. 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 state that the submitted information is maintained in the fire department's personnel file of the named individual and is therefore confidential under section 143.089(g) of the Local Government Code. We note that the submitted information includes a performance evaluation. This information is subject to section 143.089(a)(3) and must also be maintained in the named individual's civil service file under section 143.089(a). In addition, the submitted information reflects the fire fighter at issue may have received disciplinary action as contemplated under chapter 143. Section 143.089(a)(2) requires the city to place all records relating to disciplinary action in the fire fighter's civil service file and such records are subject to release. See Local Gov't Code § 143.089(a)(2), (f); ORD 562 at 6. In this instance, the request was received by the city, which is required to maintain a civil service file subject to section 143.089(a). Therefore, the performance evaluation, which we have marked, and any records pertaining to disciplinary action must be placed in the fire fighter's civil service file, and the city may not withhold the information under section 552.101 of the Government Code in conjunction with section 143.089(g). However, upon our review, we agree the remaining information must be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.<sup>2</sup>

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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. An oral or written reprimand does not constitute discipline under chapter 143.

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/eeg

Ref: ID# 353226

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)