



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2009

Mr. C. Patrick Phillips  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2009-13357

Dear Mr. Phillips:

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# 355884 (City of Fort Worth PIR No. 4446-09).

The Fort Worth Police Department (the "department") received a request for information pertaining to internal investigations and employment dates regarding a named officer. You state that the department will release most of the requested information. 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.

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You state that the department received the present request for information on June 30, 2009; therefore, the fifteen-day deadline was July 22, 2009. However, you did not submit to this office a copy or representative sample of the information requested until September 17, 2009. Consequently, we find the department failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 can provide a compelling reason to withhold information, we will consider whether any of the submitted information must be withheld on those grounds.

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. The City of Fort Worth is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). In cases in which a police department investigates a police 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 in the police officer's civil service file maintained under section 143.089(a). *See Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.).<sup>1</sup> Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local 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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted information consists of department personnel records for the named officer. You inform us that the internal investigations did not result in discipline under chapter 143. You also represent that these records are maintained in the department's internal files as authorized under section 143.089(g) of the Local Government Code. Based on these 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.

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<sup>1</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. Loc. Gov't Code §§ 143.051-.055; *see* Attorney General Opinion JC-0257 (written reprimand is not disciplinary action for purposes of Local Gov't Code chapter 143). *Id.*

We note that in this instance the requestor has submitted a release authorization 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), the requestor 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. Finally, the requestor has not pointed us to any other law providing the requestor with a right of access to this information. Therefore, the department must withhold the submitted records under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. As our ruling is dispositive, we need not address your remaining argument 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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 355884

Enc. Submitted documents

c: Requestor  
(w/o enclosures)