



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 13, 2009

Mr. Stephen R. Alcorn  
Assistant City Attorney  
City of Grand Prairie  
P.O. Box 534045  
Grand Prairie, Texas 75053-4045

OR2009-16139

Dear Mr. Alcorn:

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# 361400.

The City of Grand Prairie (the "city") received a request for records of a specified interview. You ask whether the submitted information must be released in response to the request. We understand you to claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments 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. Section 552.101 encompasses section 143.089 of the Local Government Code. You state the city is a civil service city under chapter 143 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). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against a police 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

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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.

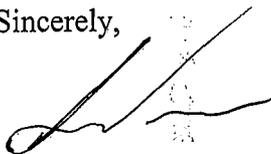
disciplinary action are "from the employing department" when they are held by or in possession of the city because of its investigation into a police officer's misconduct, and the city must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records 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 a police 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). 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).

The submitted information consists of an interview conducted during an investigation of the city's police department's chief of police. You inform us the chief of police is not a civil service employee. Section 143.089 of the Local Government Code only applies to the personnel files of civil service peace officers and firefighters. You fail to inform our office that any of the submitted information is also maintained in the police department's internal file of a civil service commissioned employee. Therefore, section 143.089 of the Local Government Code is not applicable to the submitted information, and no part of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. As you have claimed no other exceptions to disclosure, the submitted information must be released.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 361400

Enc. Submitted documents

c: Requestor  
(w/o enclosures)