



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2009

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

OR2009-16830

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# 363223.

The Austin Police Department (the "department") received a request for (1) nine categories of information pertaining to internal affairs complaints, including complaints against six named officers; (2) a specified appeal proceedings hearing; and (3) all information pertaining to a specified investigation involving one of the named officers. You state you will release 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

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 exception encompasses information that other statutes make

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.

confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code. We understand that the City of Austin (the "city") is a civil service municipality 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, including one that must be maintained as part of the officer's civil service file and another that the police department may maintain for its own internal use. See Local Gov't Code § 143.089(a), (g). The officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See *id.* § 143.051 *et seq.* 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, 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). See *Abbott v. 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 are in the 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 personnel file. *Id.* 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). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. See Local Gov't Code § 143.089(b)-(c).

Subsection (g) of section 143.089 authorizes the police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Id. § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer’s personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made the records confidential. *See* 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting confidentiality under Local Gov’t Code § 143.089(g) to “information reasonably related to a police officer’s or fire fighter’s employment relationship”); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of Local Gov’t Code § 143.089(a) and (g) files).

You state the information in Exhibit B pertains to investigations of department police officers and investigations conducted by the department’s Internal Affairs Division. You state that none of these investigations resulted in disciplinary action under chapter 143 of the Local Government Code. However, we note that Exhibit B includes investigations of misconduct that resulted in the suspension of some of the named officers. An officer’s civil service file must contain documents relating to any misconduct in those cases where the police department took disciplinary action against the officer. *See* Local Gov’t Code § 143.089(a)(2); *see also id.* §§ 143.051-.052 (suspension and uncompensated duty are “disciplinary action[s]” for purposes of section 143.089(a)(2)). Accordingly, the documents pertaining to investigations of misconduct that resulted in suspension must be maintained in the officers’ civil service files under section 143.089(a). In this instance, you indicate that the request has been forwarded to the city’s Civil Service Commission.² Therefore, we agree that Exhibit B is confidential under section 143.089(g) of the Local Government Code and must be withheld from disclosure under section 552.101 of the Government Code.

You also contend that the information in Exhibit A is confidential under section 143.089(g). You inform us that at the time of the creation of Exhibit A, the city and the Austin Police Association were parties to a Meet and Confer Agreement (the “agreement”) under subchapter I of chapter 143 of the Local Government Code.³ *See* Local Gov’t Code § 143.301 *et seq.* Subchapter I includes section 143.307, which provides as follows:

- (a) An agreement under this subchapter supersedes a previous statute concerning wages, salaries, rates of pay, hours of work, or other terms and conditions of employment to the extent of any conflict with the statute.

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.

³You have provided a copy of the relevant agreement. You inform us that it has since been superseded by another agreement between the city and the police association under subchapter I.

(b) An agreement under this subchapter preempts any contrary statute, executive order, local ordinance, or rule adopted by the state or a political subdivision or agent of the state, including a personnel board, a civil service commission, or a home-rule municipality.

(c) An agreement under this subchapter may not diminish or qualify any right, benefit, or privilege of an employee under [chapter 143 of the Local Government Code] or other law unless approved by a majority vote by secret ballot of the members of the association recognized as a sole and exclusive bargaining agent.

Id. § 143.307; *see id.* § 143.302(1) (defining “association”). You explain that the agreement establishes a citizen oversight system to review complaints of alleged misconduct by department police officers and that the system includes the office of the police monitor and a citizen’s review panel. You state that the police monitor administers the review panel’s activities and is responsible for keeping records of the panel’s meetings. Section 8 of article 16 of the agreement, titled “Access to Section 143.089(g) Files,” provides in part:

(a) Information concerning the administrative review of complaints against [police] officers, including but not limited to Internal Affairs Division files and all contents thereof, are intended solely for the [police] Department’s use pursuant to Section 143.089(g) of the Local Government Code (the 143.089(g) file.). All records of the Police Monitor’s Office that relate to individual case investigations and the [police department] 143.089(g) file, although same are not [department] files or records, shall have the same statutory character in the hands of the Police Monitor, and shall not be disclosed by any person, unless otherwise authorized by law. Public access to such information is strictly governed by this agreement and Texas law. To the extent necessary to perform their duties, individuals involved in the Citizen Oversight process are granted a right of access to the information contained within the 143.089(g) files of police officers.

Agreement art. 16, § 8(a); *see generally id.* art. 16 (“Citizen Oversight of the Austin Police Department”). You state that Exhibit A consists of information maintained by the police monitor that pertains to investigations of police officers that did not result in disciplinary action under chapter 143 of the Local Government Code. On the basis of section 8(a) of the agreement, you contend that Exhibit A is confidential under section 143.089(g) of the Local Government Code. Based on your representations and our review of the agreement and the information at issue, we conclude that the department also must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 143.089(g) 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.

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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 363223

Enc. Submitted documents

c: Requestor
(w/o enclosures)