



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2009

Ms. Julie Gannaway
Lynn, Pham & Ross, L.L.P.
306 West Broadway Avenue
Fort Worth, Texas 76104

OR2009-16960

Dear Ms. Gannaway:

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# 362786.

The City of Belton (the "city"), which you represent, received a request for a named officer's personnel and service records. You state that you are releasing some 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 exceptions you claim and reviewed the submitted information.¹

Section 552.101 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, such as section 143.089 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that a city's 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).

The police officer's civil service file must contain specific items, including commendations, periodic evaluations by the officer's supervisor, and documents from the employing department relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *See id.* § 143.089(a)(1)-(2). In cases in which a police department investigates a police officer's

¹We assume 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.

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).² *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 personnel file. *Id.* Such records are subject to release under chapter 552 of the Government Code. *See id.* § 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. *Id.* § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the police department and that is 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. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us the city is a civil service city under chapter 143 of the Local Government Code. You state Exhibit C is maintained solely in the officer's departmental personnel file. Based on your representations and our review of the submitted information, we agree Exhibit C is confidential under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. You inform us that Exhibit B is “currently located in the civil service director's ‘A’ file” and is not contained in the officer's departmental personnel file. We understand you to contend that Exhibit B does not fall within any of the categories of information that must be placed in the officer's civil service file. *See* Local Gov't Code § 143.089(a)(1)-(3). You ask whether information that is not required to be held in the officer's civil service file should be removed and placed in the officer's departmental file under section 143.089(g). We note that although section 143.089(a) does, in fact, provide an exclusive list of the information that is *required* to be maintained in the civil service file, the statute does not clearly prohibit the inclusion of the information at issue in that file. *Cf.* Open Records Decision No. 525 at 4 (1989) (information cannot be withheld from public disclosure by negative implication simply because a statute designates other specific information as public information). Moreover, all information held in a civil service file under section 143.089(a) is subject to release under the Act. *Id.* § 143.089(f). Therefore, because the information at issue is held in the officer's

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143.

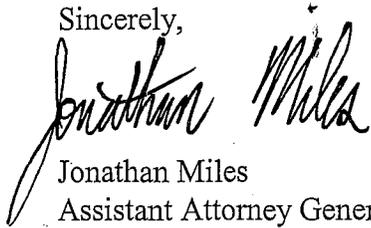
civil service file under section 143.089(a), and you assert no other exception to its disclosure, the city must release the submitted information to the requestor. *See also* Local Gov't Code §143.089(e) (granting right of access to a police officer for "any letter, memorandum, or document placed in the person's personnel file").³

In summary, the city may withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The remaining 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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 362786

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Because the information being released contains confidential information to which the requestor, as the attorney for the individual to which the confidential information pertains, has a right of access under section 552.023 of the Government Code, the city should again seek a ruling from this office if it receives another request for this particular information from a different requestor. *See* Gov't Code § 552.023(a) (providing that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, 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"; 552.301(a)."