



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2009

Mr. Ronald F. Plackemeier
City Attorney
City of Texas City
P.O. Drawer 2608
Texas City, Texas 77592-2608

OR2009-17171

Dear Mr. Plackemeier:

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# 363213.

The City of Texas City (the "city") received a request for the complete internal affairs investigation file of a named police officer, including witness statements, photographs and digital recordings related to a specified address, and unauthorized images from the named officer's computer. You state that the information relating to the specified address is located in the criminal file, which was forwarded to the Galveston County District Attorney and is no longer in the city's possession.¹ 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

¹The Act does not require a governmental body to take affirmative steps to obtain information that is not in its possession. *See* Gov't Code § 552.002(a); Open Records Decision No. 518 at 3 (1989). However, information in the possession of another entity may nevertheless be subject to the Act if the entity holds the information for the governmental body or if the governmental body owns or has a right of access to the information. *See* Gov't Code § 552.002(a). A governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990).

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. You state that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code 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 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.). Section 143.089(e) grants a right of access to a police officer for “any letter, memorandum, or document placed in the person’s personnel file.” See Local Gov’t Code § 143.089(e). This office has interpreted this provision to grant a police officer an affirmative right of access to the information in his or her personnel file maintained under section 143.089(a). See Open Records Decision No. 650 at 2 n.2 (1996). We note that the entirety of the submitted information pertains to an internal affairs investigation in which disciplinary action was taken against the named police officer. Thus, this information must be placed in the officer’s civil service file pursuant to section 143.089(a)(2). In this instance, the requestor is the attorney for the officer whose information is at issue. Thus, because the submitted information must be maintained in the officer’s civil service file, the requestor has a right of access to the submitted information under section 143.089(e). As you raise no other exception to disclosure of the submitted information, it must be released to the requestor pursuant to section 143.089(e) of the Local Government Code.³

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,

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov’t Code §§ 143.051-143.055.

³Should the city receive another request for these same records from a person who would not have a statutory right of access to the information, the city should resubmit this same information and request another ruling from this office. See Gov’t Code § 552.301(a).

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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 363213

Enc. Submitted documents

c: Requestor
(w/o enclosures)