



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2010

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

OR2010-10383

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# 386382.

The Fire Fighter's Civil Service Commission of the City of Irving (the "commission") received a request for a named fire fighter's public personnel file and other files related to his indefinite suspension, including audio recordings from his suspension hearing. You represent this request was also received by the City of Irving (the "city"). You claim the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions 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 section encompasses information protected by other statutes, including 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 fire fighter's civil service file that a city's civil service director is required to maintain, and an internal file that the fire department may maintain for its own use. *See* Local Gov't Code § 143.089(a), (g).

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.

In cases in which a fire department investigates a fire fighter's misconduct and takes disciplinary action against the fire fighter, 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 fire fighter's civil service file maintained under section 143.089(a).² See *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 fire fighter's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. See *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 fire fighter's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. See Local Gov't Code § 143.089(b). Information that reasonably relates to a fire fighter's employment relationship with the fire department and that is maintained in the department's internal file pursuant to section 143.089(g) is confidential and must not be released. See *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 Gen.*, 851 S.W. 2d 946, 949 (Tex. App.—Austin 1993, writ denied).

In this instance, the request was received by the commission, which is the entity that maintains the fire fighter's civil service file pursuant to section 143.089(a). You represent the request was also received by the city, which has access to the file maintained under section 143.089(g) by the fire department. You explain the submitted documents and audio recordings are maintained within the fire department's internal file maintained by the fire department pursuant to section 143.089(g). You assert the documents and audio recordings pertain to an investigation of misconduct regarding the named fire fighter, but that disciplinary action under chapter 143 was not taken as a result of this investigation because the fire fighter resigned. See Local Gov't Code §§ 143.051-.055. Upon review, we agree the documents and audio recordings maintained within the fire department's internal file must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. We note, however, you indicate the audio recordings also pertain to a later investigation of misconduct by the named fire fighter that resulted in disciplinary action. See *id.* You indicate information related to this investigation, including the audio recordings, is contained in the fire fighter's civil service file maintained under section 143.089(a). You indicate that, with the exception of these audio recordings, information in the fire fighter's civil service file has been released to the requestor. Section 143.089(e) grants a right of access to a fire fighter for "any letter, memorandum, or document placed in the person's personnel file." See Local Gov't Code

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov't Code §§ 143.051-.055.

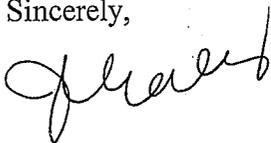
§ 143.089(e). This office has interpreted this provision to grant a fire fighter an affirmative right of access to the information in his or her personnel file maintained under section 143.089(a). *See* Open Records Decision No. 650 at 2 n.2 (1996). In this instance, the requestor is the attorney for the fire fighter whose information is at issue. Thus, because the audio recordings are maintained within the fire fighter's civil service file pursuant to section 143.089(a)(2), the requestor has a right of access to this information under section 143.089(e). Although you also raise section 552.103 of the Government Code for this information, as a general rule, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. Attorney General Opinion DM-146 at 3 (1992); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, the city must release the audio recordings maintained within the civil service file pursuant to section 143.089(a) to this requestor.

In summary, the city must withhold the submitted documents and audio recordings maintained within the fire department's internal file under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The audio recordings maintained within the civil service file pursuant to section 143.089(a) of the Local Government Code must be released to this requestor.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 386382

Enc. Submitted documents

c: Requestor
(w/o enclosures)