



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 15, 2011

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-05251

Dear Mr. Phillips:

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# 414660 (PIR No. W006294).

The City of Fort Worth (the "city") received a request for internal investigation records pertaining to a named city police officer and seven specified dates and incidents. You claim the submitted investigation records are 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 received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note you have submitted information pertaining to only five of the seven dates and incidents specified in the request. To the extent responsive information pertaining to the remaining two specified dates and incidents existed on the date the city received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 other statutes make confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code for the submitted investigation records. You state the city is a civil service city 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: one that must be maintained as part of the officer's civil service file and another 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 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. *Id.* §§ 143.051-.055; see Attorney General Opinion JC-0257 (written reprimand is not disciplinary action for purposes of chapter 143 of the Local Government Code). 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). 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).

You state the submitted internal affairs investigation records pertain to allegations of misconduct by the named city police officer that did not result in disciplinary action. You further state this information is maintained in the city police department's internal files as authorized under section 143.089(g) of the Local Government Code. Based on your representations and our review, we agree the submitted records are confidential pursuant to section 143.089(g) of the Local Government Code.

In this instance, the requestor is an officer with the Camden County Sheriff's Office. In his comments to this office, the requestor provides an authorization to release information signed by the named officer whose records are at issue. Although section 143.089(e) of the Local Government Code provides officers a right of access to their own civil service files maintained under section 143.089(a) of the Local Government Code, this office has determined officers do not have a right to their own internal files maintained by police departments pursuant to section 143.089(g) of the Local Government Code. See Open Records Decision No. 650 at 3 (1996) (confidentiality provision of section 143.089(g)

contains no exceptions). Thus, because the submitted records are maintained by the city's police department pursuant to section 143.089(g), the requestor does not have a right of access to these records under section 143.089 of the Local Government Code.

We also note that although section 552.023 of the Government Code grants a person's authorized representative a special right of access to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests, confidentiality under section 143.089(g) of the Local Government Code is not privacy based. Therefore, because the submitted records are maintained pursuant to section 143.089(g), the right of access under section 552.023 does not apply to this information. Finally, the requestor has not pointed us to any other law providing the requestor with a right of access to this information. Therefore, the city must withhold the submitted information 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/eeg

Ref: ID# 414660

Enc. Submitted documents

c: Requestor
(w/o enclosures)