



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2012

Ms. Victoria Huynh
Deputy City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2012-00068

Dear Ms. Huynh:

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# 441299.

The City of Plano (the "city") received a request for a specified report. 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.

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. 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 fire fighter: one that must be maintained as part of the fire fighter's civil service file and another the fire 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 fire fighter's supervisor, and documents relating to any misconduct in which the fire 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. In cases in which a fire department investigates a fire fighter's misconduct and takes disciplinary action against a 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). *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 fire fighter'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 fire 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 inform us the submitted information consists of internal files maintained by the city's fire department under section 143.089(g) in connection with the employment of the individuals whose information is at issue. You state the investigation at issue has concluded and has not resulted in disciplinary action. We note that section 143.021(b) of the Local Government Code provides that “[e]xcept for the *department head* and a person the department head appoints in accordance with Section 143.014 or 143.0102, each fire fighter and police officer is classified as prescribed by this subchapter and has civil service protection.” Local Gov't Code § 143.021(b) (emphasis added). Section 143.003 of the Local Government Code defines “department head” as “the chief or head of a fire or police department or that person's equivalent, regardless of the name or title used.” *Id.* § 143.003(2). You inform us the information at issue consists of a single investigation that resulted in only one report and you state this report was placed in the personnel files of the fire chief as well as the personnel files of the two fire fighters. You argue that because the investigation concerned two other fire fighters, who have civil service protection, the investigation inextricably interweaves and co-mingles allegations against these other fire fighters with those against the fire chief. However, as noted, the investigation at issue resulted in only one report, and this report was placed within the fire chief's personnel file, which is not confidential under section 143.089(g). The city may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Accordingly, as the submitted information exists in the fire chief's file independently of the other fire fighter's internal files, we conclude it is not confidential pursuant to section 143.089(g) of the Local Government Code and may not be withheld under section 552.101 of the Government Code on that basis.

We note some of the submitted information may be subject to section 552.117(a)(1) of the Government Code.¹ Section 552.117(a)(1) of the Government Code exempts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

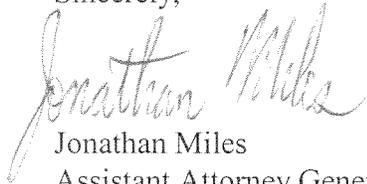
governmental body who request that this information be kept confidential under section 552.024. Gov't Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employees whose information we have marked timely elected to keep their respective personal information confidential pursuant to section 552.024, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. The city may not withhold this information under section 552.117(a)(1) if the employees did not make timely elections to keep their information confidential.

In summary, if the employees whose information we have marked timely elected to keep their personal information confidential pursuant to section 552.024, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. The city must release the remaining information.

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/em

Ref: ID# 441299

Enc. Submitted documents

c: Requestor
(w/o enclosures)