



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 20, 2012

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 8399-6  
San Antonio, Texas 78283

OR2012-04064

Dear Mr. Weir:

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# 448062 (COSA File No. W004899-121911).

The City of San Antonio (the "city") received a request for the service file of a specified police officer. You claim the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions 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 section encompasses section 143.089 of the Local Government Code. 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 Local Gov't Code chapter 143). 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 information is held in a file maintained by the city's police department under section 143.089(g). Upon review, we agree most of the submitted information constitutes an internal file maintained by the city's police department for its own use and thus is confidential under section 143.089(g). Accordingly, with the exception of the information we have marked, the city may withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, the information we have marked consists of evaluations of the named officer. As previously noted, a police officer's civil service file must contain evaluations conducted by the officer's supervisor. See Local Gov't Code § 143.089(a). In this instance, the request was received by the city, which has access to the files maintained under subsections 143.089(a) and 143.089(g); therefore, the request encompasses both of these files. Because the information we have marked consists of evaluations it must be maintained in the civil service file pursuant to section 143.089(a)(1). This information may not be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. As you raise no other exceptions, the marked 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](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,

A handwritten signature in black ink that reads "Misty Haberer Barham". The signature is written in a cursive, flowing style.

Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/som

Ref: ID# 448062

Enc. Submitted documents

c: Requestor  
(w/o enclosures)