



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2012

Mr. Norman Ray Giles
Counsel for the City of Santa Fe
Chamberlain, Hrdlicka, White, Williams, & Aughtry, P.C.
1200 Smith Street, Suite 1400
Houston, Texas 77002

OR2012-13790

Dear Mr. Giles:

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# 464275.

The Santa Fe Police Department (the "department"), which you represent, received a request for the personnel files of two named individuals. You state the department has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.1175 of the Government Code.¹ 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 information protected by other statutes, including section 143.089 of the Local Government Code. We understand the City of Santa Fe is a civil service city. Section 143.089 contemplates two different types of personnel files, a

¹Although you also raise section 552.108 of the Government Code as an exception to disclosure, you have provided no arguments regarding the applicability of this section. We therefore assume you have withdrawn your claim under this exception. *See* Gov't Code § 552.301(b), .302. Additionally, although you raise section 552.024 of the Government Code as an exception to disclosure, we note that this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See id.* § 552.024. We note section 552.117 of the Government Code is the proper exception to assert.

police officer's civil service file that a city's civil service director is required to maintain, and an internal file that the police department may maintain for its own use. *See* 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 *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 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 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 police officer'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 police officer's employment relationship with the police department and that is maintained in a police 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 General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us the department has released the named officers' civil services files pursuant to section 143.089(a). You indicate the submitted records are taken from the department's internal files of the named officers. Upon review, we agree the submitted records constitute internal files maintained by the department for its own use and thus, are confidential under section 143.089(g) of the Local Government Code. Accordingly, the department must withhold the submitted records under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. As our ruling is dispositive, we do not address your remaining arguments to withhold the submitted 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

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055; *see* Attorney General Opinion JC-0257 (written reprimand is not disciplinary action for purposes of Local Gov't Code chapter 143).

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 464275

Enc. Submitted documents

c: Requestor
(w/o enclosures)