



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2013

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2013-01204

Dear Ms. Pemberton:

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# 476649 (Killeen PIR# W009219).

The City of Killeen (the "city") received a request for employment records concerning a named probationary police officer. You claim 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses 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 police officer: one that must be maintained as part of the officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). We note section 143.089(a) requires the civil service director to maintain a personnel file on each "police officer." Likewise, section 143.089(g) states that a police department may maintain a personnel file on each "police officer." Both subsections refer to "police officer." We note the individual whose information is at issue was hired by the city's police department (the "department") as a probationary officer. Section 143.003 defines a police officer as a member of a police

department or other peace officer who was appointed in substantial compliance with chapter 143 or who is entitled to civil service status under other sections of chapter 143. *Id.* § 143.003(5). We understand the named officer was appointed in substantial compliance with chapter 143. Therefore, we agree the named officer was a "police officer" subject to chapter 143.

Under section 143.089(a), 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 police 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, a document relating to a police officer's alleged misconduct may not be placed in his civil service file if there is insufficient evidence to sustain the charge of misconduct. 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. *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).

The submitted information consists of employment records that you state are maintained in the department's internal file. Based on this representation and our review, we agree the information contained in the department's internal file is generally confidential under section 143.089(g) of the Local Government Code.

However, the submitted information indicates the officer at issue received a voluntary demotion. An officer's civil service file must contain documents relating to any misconduct in those cases where the police department took disciplinary action against the officer. See

Local Gov't Code § 143.089(a)(2). A voluntary demotion is a disciplinary action under subchapter D of chapter 143 of the Local Government Code. *See id.* § 143.054(e) (voluntary demotion). As previously stated, all information pertaining to charges of misconduct that resulted in disciplinary action must be maintained in the officer's civil service file under section 143.089(a) of the Local Government Code. In this instance, the request was received by the city, which has access to the files maintained under sections 143.089(a) and 143.089(g); therefore, the request encompasses both of these files. Although you have not submitted the civil service file maintained under section 143.089(a) for our review, we note the submitted information must be included in that file. *See* 109 S.W.3d at 122. Information contained in the civil service file generally must be released, unless it is shown that some provision of the Act permits the information to be withheld from public disclosure. *See* Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; ORD 562 at 6. As you raise no further exception to disclosure, the city must release the submitted information from the officer's civil service file.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 476649

Enc. Submitted documents

c: Requestor
(w/o enclosures)

