



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2014

Ms. Nan Rodriguez
Deputy City Attorney
Legal Department
City of Temple
2 North Main, Suite 308
Temple, Texas 76501

OR2014-01557A

Dear Ms. Rodriguez:

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# 520453.

You have asked this office to reconsider Open Records Letter No. 2014-01557 (2014), which we issued on January 27, 2014. We note a governmental body is prohibited from asking this office to reconsider a decision issued under section 552.306 of the Government Code. *See* Gov't Code § 552.301(f). Furthermore, you have not demonstrated this office made an error in issuing the prior ruling. Nevertheless, we have determined the prior ruling should be corrected for purposes of due process. *See id.* §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2014-01557 and serves as the correct ruling.

The City of Temple (the "city") received a request for information pertaining to a named individual, including personnel, disciplinary, and internal investigation records. You state the city will release some information to the requestor. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We

have considered the exception you claim and reviewed the submitted representative sample of information.¹

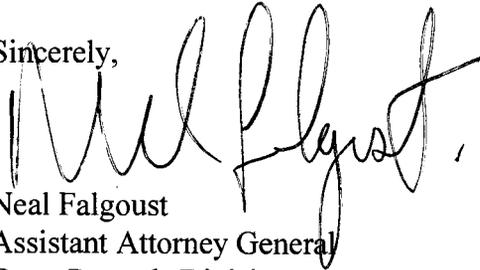
Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses section 143.089 of the Local Government Code. We understand the city is a civil 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). 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 (2000) (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*,

¹We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

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).

You state Exhibit C relates to personnel records that are held by the city's police department in an internal file under section 143.089(g). Based on this representation and our review, we agree the city must withhold the records in Exhibit C under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Sincerely,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive, flowing style with a large initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 520453

Enc: Submitted documents

c: Requestor
(w/o enclosures)