



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 9, 2014

Mr. Peter Gruning  
Counsel for the Lockhart Police Department  
The Law Office of Peter Gruning, PLLC  
P.O. Box 314  
San Marcos, Texas 78667-0314

OR2014-07898

Dear Mr. Gruning:

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# 522250.

The Lockhart Police Department (the "department"), which you represent, received a request for all documents pertaining to a named officer and pertaining to a specified cause number. You state you have released some of the requested information to the requestor. 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 section excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. You state that the City of Lockhart (the "city") is a civil service city under chapter 143 of the Local Government Code.<sup>1</sup> 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

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<sup>1</sup>You inform us the city adopted chapter 143 on October 30, 2008, thereby implementing civil service.

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)-(3). 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.<sup>2</sup> *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).

You inform us that the information in Exhibit C is maintained in the department's internal file pursuant to section 143.089(g). We note some of the documents at issue were compiled and placed in the officer's personnel file prior to the city's adoption of chapter 143. Section 143.005 of the Local Government Code states, in pertinent part:

(a) Each fire fighter or police officer serving in a municipality that adopts this chapter and who has been in the service of the municipality for more than six months at the time this chapter is adopted and who is entitled to civil service classification has the status of a civil service employee and is not required to

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<sup>2</sup>You state the department has referred the requestor to the civil service commission as required by section 143.089(g), and the civil service commission will release the files maintained under section 143.089(a).

take a competitive examination to remain in the position the person occupies at the time of the adoption.

Local Gov't Code § 143.005(a). Therefore, officers who have been employed for more than six months when the city adopts chapter 143 are civil service employees and enjoy the full protections of the chapter. The submitted documents show the officer to whom these records pertain was employed by the department for at least six months prior to the city's adoption of chapter 143. Therefore, once the city adopted chapter 143, section 143.089(g) applies to the officer's personnel file that the department maintained for its own use. You indicate the information at issue was maintained in the officer's departmental personnel file when the city adopted chapter 143. Based on your representations and our review of the documents at issue, we agree that the information in Exhibits C is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/tch

Ref: ID# 522250

Enc. Submitted documents

c: Requestor  
(w/o enclosures)