



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2015

Ms. Judith Sachitano Rawls
Assistant City Attorney
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2015-26903

Dear Ms. Rawls:

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# 591905 (Beaumont OR# 10-05).

The Beaumont Police Department (the "department") received a request for disciplinary records, internal affairs reports, employee records, and certifications for two named police officers. You state the department will release some information to the requestor. 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 of Beaumont 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.¹ *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).

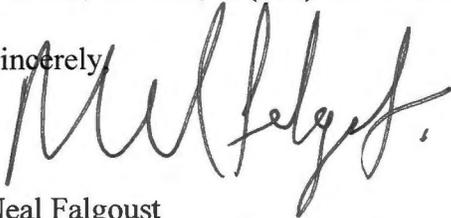
You state the information submitted as Exhibit B and the information you marked in Exhibit B-1, which consists of IA Pro use of force printouts, are maintained in the department’s internal file pursuant to section 143.089(g). You explain none of the incidents at issue in this information resulted in disciplinary action against the officers. We note use of force reports were the subject of prior litigation between the City of Beaumont and this office. *See City of Beaumont v. Abbott, Attorney Gen. of Tex.*, No. D-1-GV-07-002630 (345th Dist. Ct, Travis County, Tex., Oct. 26, 2010). As part of the subsequent settlement agreement, the parties agreed the IA Pro printouts were not confidential under section 143.089(g) in their entirety. Instead, the parties agreed that only portions of the printouts were confidential under this section. *See id.* (IA Pro printouts, as redacted by this office, subject to disclosure). Based on your representations and our review, we conclude the information submitted as Exhibit B and the information you marked in Exhibit B-1 are confidential under section 143.089(g) and the department must withhold that information under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments.

¹You state the department has referred the requestor to the city’s civil service director for records that are maintained in the officers’ civil service files.

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, 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,

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

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/sb

Ref: ID# 591905

Enc. Submitted documents

c: Requestor
(w/o enclosures)