



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2015

Ms. Stephanie H. Harris
Assistant City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2015-09135

Dear Ms. Harris:

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# 562896.

The Paris Police Department (the "department") received a request for the requestor's personnel file. 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 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 such as section 143.089 of the Local Government Code. You state the City of Paris is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files relating to a police officer: a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. 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 sections refer to "police officer." We note the requestor was hired by the city's police 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

requestor 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)-(3).

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).¹ *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 police 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 an 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. Local Gov’t Code § 143.089(b). In addition, a document relating to disciplinary action against a police officer that has been placed in the officer’s personnel file as provided by section 143.089(a)(2) must be removed from the officer’s file if the civil service commission finds the disciplinary action was taken without just cause or the charge of misconduct was not supported by sufficient evidence. *See id.* § 143.089(c). Information that reasonably relates to an 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. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the submitted information is contained within the department’s internal files maintained pursuant to section 143.089(g) of the Local Government Code. We note this office has determined officers do not have a right of access to their own internal files maintained pursuant to section 143.089(g) of the Local Government Code. *See* Open

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. Local Gov’t Code §§ 143.051-.055; *see, e.g.*, Attorney General Opinion JC-0257 (2000) (written reprimand is not disciplinary action for purposes of Local Government Code chapter 143).

Records Decision No. 650 at 3 (1996) (confidentiality provision of section 143.089(g) contains no exceptions). You explain some of the submitted information pertains to a completed internal administrative investigation of the requestor where the requestor resigned in lieu of discipline. Based on your representations and our review, we agree the submitted information is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

However, we note some of the some of the submitted information pertains to an investigation as a result of which the department took disciplinary action against the requestor. Although you assert, as a probationary employee, the requestor was not yet covered by civil service protections at the time of this disciplinary action, as noted above, we find the requestor was a "police officer" under chapter 143 of the Local Government Code. Further, we noted both subsections 143.089(a) and 143.089(g) refer to "police officer." Local Gov't Code § 143.089(a), (g). Thus, while we agree information maintained in this police officer's departmental file is confidential under section 143.089(g) and must be withheld under section 552.101 of the Government Code, information regarding the requestor's misconduct that resulted in disciplinary action must also be maintained in the officer's civil service personnel file under section 143.089(a).² Accordingly, the department must refer the requestor to the civil service director as required under section 143.089(g).

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

²A peace officer is entitled to information in his civil service personnel file maintained pursuant to section 143.089(a). Local Gov't Code § 143.089(e).

Ref: ID# 562896

Enc. Submitted documents

c: Requestor
(w/o enclosures)