



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 17, 2015

Mr. Guillermo Trevino  
Assistant City Attorney  
Office of the City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2015-11975

Dear Mr. Trevino:

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# 567678 (City PIR No. W041388).

The City of Fort Worth (the "city") received a request for all information related to investigations pertaining to the requestor's client. 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.

The city states it sought clarification of the request. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). The city states it has not received a response to a portion of the request for clarification. Thus, for the portion of the requested information for which the city has sought but has not received clarification, we find the city is not required to release information in response to this portion of the request. However, if the requestor clarifies this portion of the requests for information, the city must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code § 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good-faith effort to relate a request for information

to information the governmental body holds. Open Records Decision No. 561 (1990). In this case, as the city has submitted information responsive to the request and has made arguments against disclosure of this information, we will address the applicability of its arguments to 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. Section 552.101 of the Government Code 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 contemplates two different types of personnel files relating to a fire fighter: a fire fighter’s civil service file that the civil service director is required to maintain, and an internal file that the fire department may maintain for its own use. Local Gov’t Code § 143.089(a), (g). The fire fighter’s civil service file must contain certain specified items, including commendations, periodic evaluations by the fire fighter’s supervisor, and documents relating to any misconduct in which the department took disciplinary action against the fire fighter under chapter 143 of the Local Government Code. *Id.* § 143.089(a).

In cases in which a fire department investigates a fire fighter’s misconduct and takes disciplinary action against a fire fighter, 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 fire fighter’s civil service file maintained under section 143.089(a).<sup>1</sup> *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 fire department because of its investigation into a fire fighter’s misconduct, and the fire 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 fire fighter’s alleged misconduct may not be placed in her 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 fire fighter that has been placed in the fire fighter’s personnel file as provided by section 143.089(a)(2) must be removed from the fire fighter’s file if the civil service commission finds the disciplinary action was taken without just cause or the

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<sup>1</sup>Chapter 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).

charge of misconduct was not supported by sufficient evidence. *See id.* § 143.089(c). Information that reasonably relates to a fire fighter's employment relationship with the fire department and that is maintained in a fire 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 explain the information in Exhibits C-1, C-2, and C-3 consists of records of internal affairs investigations or cases that were unfounded or did not result in disciplinary action. Additionally, you state the information in Exhibit C-4 relates to an internal investigation of alleged misconduct by a fire fighter employed by the city's fire department. You also inform us the investigation is currently pending and no disciplinary action has been taken. Thus, we understand that this investigation has not resulted in disciplinary action, as defined in chapter 143, against the fire fighter at issue. You further inform us the information in Exhibits C-1, C-2, C-3, and C-4 is maintained in the city's fire department's internal personnel files under section 143.089(g). Based on your representations and our review, we conclude the information at issue is confidential under section 143.089(g) of the Local Government Code. Accordingly, the city must withhold Exhibits C-1, C-2, C-3, and C-4 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local 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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 567678

Enc. Submitted documents

c: Requestor  
(w/o enclosures)