



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2015

Mr. Blake E. Armstrong
Counsel for the City of Athens
Birdsong & Armstrong, P.C.
211 East Houston Street
Tyler, Texas 75702

OR2015-17176

Dear Mr. Armstrong:

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# 576405.

The Athens Police Department (the "department"), which you represent, received a request for information pertaining to a named department police officer. The department states it has provided some of the requested information to the requestor, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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. The department states the City of Athens is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: 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). 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 department because of its investigation into a police officer’s misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under the Act. *See* Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information 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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

The department informs us the submitted information pertains to investigations that did not result in disciplinary action against the named officer. The department states this information is maintained in the police department’s internal files concerning the named officer. Based on these representations and our review of the documents at issue, we agree this information is confidential pursuant to section 143.089(g) of the Local Government Code and the department must withhold it under section 552.101 of the Government Code on that ground.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055.

Ref: ID# 576405

Enc. Submitted documents

c: Requestor
(w/o enclosures)