



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 30, 2015

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2015-20517

Dear Mr. Weir:

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# 587071 (San Antonio File No. W088706).

The City of San Antonio (the "city") received a request for information pertaining to a named city fire department employee. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> 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. Section 552.101 encompasses information protected by 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 provides for the maintenance of two different types of personnel files for each fire fighter employed by a civil service city: one that must be maintained as part of the fire fighter's civil service file and another that the fire department may maintain for its own internal use. *See* Local Gov't Code

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<sup>1</sup>We note the city did not comply with the requirements of section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Nonetheless, section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the city's claim under this exception.

§ 143.089(a), (g). Under section 143.089(a), 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 any instance 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. A letter of reprimand does not constitute discipline under chapter 143. *See* Attorney General Opinion JC-0257. 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). *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 fire fighter's misconduct, and the 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). Information relating to alleged misconduct or disciplinary action taken must be removed from the fire fighter's civil service file if the fire department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See* Local Gov't Code § 143.089(b)-(c).

Section 143.089(g) authorizes a fire department to maintain, for its own use, a separate and independent internal personnel file relating to a fire fighter. *See id.* § 143.089(g). Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

*Id.* § 143.089(g). The information in a file maintained by a fire department pursuant to section 143.089(g) is confidential. *Id.*; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting confidentiality under Local Gov't Code § 143.089(g) to "information reasonably related to

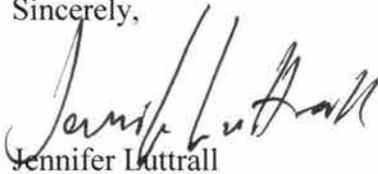
a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You state the submitted information is maintained only in the city's fire department's internal personnel file pursuant to section 143.089(g) of the Local Government Code. Based on your representation and our review, we find the submitted information is confidential under section 143.089(g) of the Local Government Code and must be withheld from disclosure 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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 587071

Enc. Submitted documents

c: Requestor  
(w/o enclosures)