



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 19, 2015

Mr. Guillermo Trevino
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2015-21929

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# 583482 (City PIR No. W044505).

The City of Fort Worth (the "city") received a request for the requestor's civil service and personnel files. You state the city has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We understand the city to be 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 firefighter employed by a civil service city: one that must be maintained as part of the firefighter's civil service file and another that the fire department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). Under section 143.089(a), the firefighter's civil service file must contain certain specified items, including commendations, periodic evaluations by the firefighter's supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the firefighter under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(3). 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).

The submitted information pertains to an incident that resulted in the requestor receiving disciplinary action. You explain the requestor is currently appealing the disciplinary action. A firefighter's civil service file must contain documents relating to any misconduct in those cases where the fire department took disciplinary action against the firefighter. *See* Local Gov't Code § 143.089(a)(2); *see also id.* §§ 143.051-.055 (describing "disciplinary action" for purposes of section 143.089(a)(2)); Attorney General Opinion JC-0257. We note section 143.089(c) provides information that must be placed in a civil service file under section 143.089(c) may be removed if the civil service commission determines the disciplinary action was taken without just cause or the charge of misconduct was not supported by sufficient evidence. *See* Local Gov't Code § 143.089(c). Therefore, section 143.089(c) signifies information relating to an incident that resulted in disciplinary action must be placed in the civil service file during the pendency of any appeal. Accordingly, this information relates to misconduct that resulted in disciplinary action against a firefighter and, thus, must also be maintained in the firefighter's civil service file pursuant to section 143.089(a)(2).

Section 143.089(e) grants a right of access to a firefighter for "any letter, memorandum, or document placed in the person's personnel file." *See id.* § 143.089(e). This office has interpreted this provision to grant a firefighter an affirmative right of access to the information in his or her personnel file maintained under section 143.089(a). *See* Open Records Decision No. 650 at 2 n.2 (1996). In this instance, the requestor is the firefighter whose information is at issue. Accordingly, the requestor has a statutory right of access to his own civil service file. You seek to withhold the submitted information under section 552.103 of the Government Code. This office has found that a statutory right of access overcomes general exceptions to disclosure under the Act. *See* Open Records Decision Nos. 613 at 3 (1994) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, the city may not withhold any of the submitted information under section 552.103 of the Government Code. As you raise no other exceptions to disclosure, the submitted information must be released.¹

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.

¹We note the requestor has right of access to the information being released in this instance. *See* Local Gov't Code § 143.089(e). If the city receives another request for this information from an individual without such right of access, the city must seek another ruling from this office.

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 'Tim Neal', written in a cursive style.

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 583482

Enc. Submitted documents

c: Requestor
(w/o enclosures)