



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2016

Mr. Alan T. Ozuna
Counsel for the City of Pharr
Denton Navarro Rocha Bernal Hyde & Zech, P.C.
701 East Harrison, Suite 100
Harlingen, Texas 78550-9165

OR2016-10255

Dear Mr. Ozuna:

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# 608996.

The City of Pharr (the "city"), which you represent, received a request for information related to a named department employee, including personnel file, documentation of disciplinary action, and a photograph. You state you have released 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.

Initially, we note some of the submitted information, which we have marked, is not responsive to the request for information because it was created after the city received the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information in response to this request.

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 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." You state the employee whose information is at issue 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 find 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)–(2). 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 (written reprimand is not disciplinary action for purposes of Local Gov't Code chapter 143). 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). *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 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 a police officer's alleged misconduct may not be placed in his civil service file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police 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. *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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the submitted documentation pertains to an internal affairs investigation regarding the named employee's alleged misconduct, for which no disciplinary action has been taken. You state the responsive information is maintained in the city's police department's internal files as authorized under section 143.089(g) of the Local Government Code. Based on this representation and our review, we find this information is confidential pursuant to section 143.089(g). Accordingly, the city must withhold the information at issue 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, 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# 608996

Enc. Submitted documents

c: Requestor
(w/o enclosures)