



October 3, 2000

Mr. Robert L. Flournoy
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Attorneys at Law
P.O. Box 1546
Lufkin, Texas 75901-1546

OR2000-3806

Dear Mr. Flournoy:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 139708.

The City of Lufkin (the "city"), which you represent, received a request for copies of any and all complaints filed with the city for the last fifteen years regarding officers of the Lufkin Police Department and the dispositions of such complaints. You inform us that the city intends to release letters of disposition, relating to complaints that resulted in disciplinary action, that are contained in civil service personnel files. The city believes, however, that complaints and disposition letters contained in the police department's internal files are confidential under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.¹

Section 552.101 of the Government Code protects from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Thus, section 552.101 encompasses information that is protected by other statutes, such as section 143.089 of the Local Government Code.² Section 143.089 contemplates the creation

¹This letter ruling assumes that the representative complaint you submitted is truly representative of the requested information as a whole. This ruling neither addresses nor authorizes the city to withhold any information that is substantially different from the information that you submitted. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²Based on your invocation of section 143.089, we understand the city to be a civil service city under chapter 143 of the Local Government Code.

and maintenance of two different types of personnel files, including one that must be maintained as part of a police officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The civil service file must contain certain specified items, including commendations, periodic evaluations by the officer's supervisor, *and documents relating to any misconduct in any instance in which the police department took disciplinary action against a police officer.* *See* Local Gov't Code § 143.089(a). (Emphasis added.) Documents relating to alleged misconduct or disciplinary action must be removed from the civil service file, however, if the police department determines that the charge of misconduct was not supported by sufficient evidence or that the disciplinary action was taken without just cause. *See* Local Gov't Code § 143.089(b), (c). Thus, subsections (a)-(c) of section 143.089 limit the contents of the civil service file.

Subsection (g) of section 143.089 authorizes but does not require the police department to maintain, for its own use, a separate and independent internal departmental personnel file relating to a police officer. Section 143.089(g) provides:

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.

Local Gov't Code § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed the applicability of section 143.089(g) to a request for information contained in a police officer's personnel file maintained by the city police department for its own use. The records included in the departmental file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) makes records contained in the departmental file confidential. *See City of San Antonio*, 851 S.W.2d at 949 (concluding that "the legislature intended to deem confidential the information maintained by the . . . police department for its own use under subsection (g)"). The court stated that the provisions of section 143.089 governing the contents of the civil service file reflect "a legislative policy against disclosure of unsubstantiated claims of misconduct made against police officers and fire fighters, except with an individual's written consent." *Id.* Thus, in those instances in which a police department takes disciplinary action against a police officer, section 143.089(a)(2) requires that records relating to the investigation and disciplinary action be placed in the personnel files maintained under section 143.089(a). The records encompassed by section 143.089(a) are subject to public disclosure under the Public Information Act, unless an exception to their disclosure is shown to be applicable. *See* Local Gov't Code § 143.089(f); *City of San Antonio*, 851 S.W.2d at 948-49; Open Records Decision No. 562 at 6 (1990). Section 143.089(g) provides that a police department that receives a request for

information relating to a police officer “may not release any information contained in the department file” maintained under section 143.089(g) and must “refer to the director [of the civil service commission] a person or agency that requests information that is maintained in the . . . police officer’s personnel file.” *See also City of San Antonio*, 851 S.W.2d at 949.

In this instance, you explain that all of the requested complaints are contained in the internal files that are maintained by the police department under section 143.089(g). You further inform us that no complaints are placed in the civil service personnel files maintained under section 143.089(a). You ask whether the city should disclose those complaints contained in the police department’s internal files that resulted in disciplinary actions. You also ask whether the city should disclose complaints that did not result in disciplinary actions. You do not advise us whether the representative complaint that you submitted resulted in disciplinary action against the affected officer. You do not raise any other exception to the disclosure of any responsive complaint. If, in fact, the submitted complaint did result in disciplinary action, then the city must include the complaint in the officer’s civil service file. A complaint properly placed in a civil service file must be made available to the requestor. Local Gov’t Code § 143.089(f); *City of San Antonio*, 851 S.W.2d at 948-49. On the other hand, if the complaint in question did not result in any disciplinary action, then the complaint may be retained in the police department’s internal files. The contents of those files are confidential and must not be released. Local Gov’t Code § 143.089(g); *City of San Antonio*, 851 S.W.2d at 949.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one

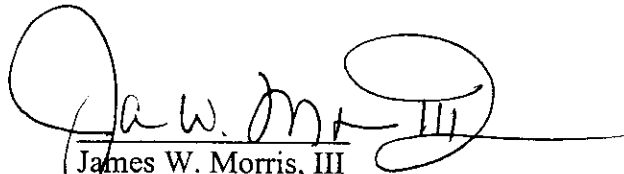
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 139708

Encl. Submitted documents

cc: Mr. Oliver Brown
NAACP
P.O. Box 150803
Lufkin, Texas 75915-0803
(w/o enclosures)