



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 2, 2015

Ms. Julie P. Doshier
Counsel for the City of Lancaster
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

OR2015-20707

Dear Ms. Doshier:

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# 582092 (File Ref. Nos. 72717, 72794).

The City of Lancaster (the "city"), which you represent, received a request for the personnel file of a named individual. The city claims the requested information is excepted from disclosure under sections 552.101, 552.102, 552.114, 552.117, 552.130, 552.136, and 552.147 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

The city argues some of the submitted information is subject to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.¹ See 34 C.F.R. § 99.3 (defining "personally identifiable information"). FERPA governs the availability of student records held by

¹A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

educational institutions or agencies receiving federal funds, and applies only to student records in the custody of educational institutions and to records directly transferred from the educational institution to the third party. *Id.* § 99.33(a)(2). The city is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth not an “educational agency” for purposes of FERPA). Further, we have no indication any portion of the information at issue was transferred directly to the city from an educational institution. Therefore, we conclude the city may not withhold any of the submitted information on the basis of FERPA.

Section 552.101 of the Government Code exempts 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 section 143.089 of the Local Government Code. We understand 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: a fire fighter’s civil service file that the civil service director is required to maintain, and an internal file that the department may maintain for its own use. Local Gov’t Code § 143.089(a), (g). In cases in which a fire department investigates a fire fighter’s misconduct and takes disciplinary action against the 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). *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 fire fighter’s misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055. Such records are subject to release under the Act. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to a fire fighter’s alleged misconduct may not be placed in the fire fighter’s civil service personnel 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 fire fighter’s employment relationship with the department and that is maintained in a department 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 information is maintained in the internal file of a city firefighter pursuant to subsection 143.089(g). We note some of this information consists of a commendation and periodic evaluations of the firefighter at issue. While this information may be kept in the internal file maintained under section 143.089(g), it must also be kept in

the civil service personnel file maintained under section 143.089(a). *See* Local Gov't Code § 143.089(a)(3). The request for information was received by the city, which has access to the files maintained under both section 143.089(a) and section 143.089(g). Therefore, the request encompasses both of these files. Accordingly, the city may not withhold the submitted commendation or periodic evaluations within the section 143.089(a) file under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, we find the remaining information is confidential under section 143.089(g) of the Local Government Code. Thus, the city must release the submitted commendation and periodic evaluations of the firefighter at issue, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.²

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

Ref: ID# 582092

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address the city's other arguments to withhold this information.