



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2017

Mr. Rashaad V. Gambrell
Senior Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2017-21538

Dear Mr. Gambrell:

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# 678044 (GC No. 24484).

The City of Houston (the "city") received a request for written decisions from employee disciplinary appeals during a certain time period.¹ You state you will release some information. 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. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information other statutes make confidential, such

¹The city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

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, a fire fighter's or police officer's civil service file that the civil service director is required to maintain, and an internal file that the fire or police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). Under section 143.089(a), the fire fighter's or police officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the individual's supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the individual 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). In cases in which a department investigates an individual's misconduct and takes disciplinary action against the individual, 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 individual'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 an individual'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). However, a document relating to a fire fighter's or police officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). In addition, a document relating to disciplinary action against a fire fighter or a police officer that has been placed in the individual's personnel file as provided by section 143.089(a)(2) must be removed from the individual's file if the civil service commission finds the disciplinary action was taken without just cause or the charge of misconduct was not supported by sufficient evidence. *See id.* § 143.089(c).

Section 143.089(g) authorizes a fire or police department to maintain, for its own use, a separate and independent internal personnel file relating to a fire fighter or police officer. *See id.* § 143.089(g). Information that reasonably relates to a fire fighter's or police officer's employment relationship with the fire or police department and is maintained in a department's internal file pursuant to section 143.089(g) is confidential and must not be released. *See 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. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us the submitted information relates to disciplinary actions taken against city fire fighters and police officers. However, you explain the disciplinary actions at issue were completely overturned by arbitration or civil service commission award findings. Therefore, we understand you to assert this information is properly maintained in the fire and police departments' internal files as authorized by section 143.089(g). However, we note the submitted information consists of the hearing examiners' decisions regarding the appeals of the disciplinary actions made by the fire fighters and police officers at issue. Pursuant to section 143.1016 of the Local Government Code, a police officer or fire fighter may elect to appeal disciplinary actions to an independent third party hearing examiner instead of to the commission. *See* Local Gov't Code § 143.1016(a); *see also id.* § 143.010 (commission appeal procedure). The hearing examiner has the same duties and powers as the commission in conducting the appeal. *Id.* § 143.1016(f). Section 143.011 of the Local Government Code provides that "[e]ach rule, opinion, directive, decision, or order issued by the commission must be written and constitutes a public record the commission shall retain on file." *Id.* § 143.011(c). As the hearing examiner has the same duties and powers as the commission, we find the written decision issued by a hearing examiner also constitutes a public record. *Id.*; *see id.* § 143.057(f); *see also City of Garland v. Byrd*, 97 S.W.3d 601 (Tex. App.—Dallas 2002, pet. denied) (private hearing examiner stands in shoes of civil service commission when rendering decision on discipline); Attorney General Letter Opinion No. 96-018 (1996) (finding hearing examiner appeals must be held in public like commission proceedings because pursuant to section 143.057 hearing examiner has same duties and powers as commission). Thus, the submitted hearing examiners' decisions are subject to section 143.011(c) and are public records. Although you claim the information at issue is confidential under sections 143.089(g) and 143.1214(a) of the Local Government Code, we find section 143.011 expressly makes appeal decisions issued by the commission public, and section 143.1016 assigns the same commission duties to a hearing examiner. Thus, section 143.011 specifically controls the hearing examiners' appeal decisions at issue in this ruling, not section 143.089(g) or section 143.1214(a). Therefore, the city must release the submitted decisions of the hearing examiners under section 143.011 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,

A handwritten signature in black ink that reads "Emily Kunst". The signature is written in a cursive, flowing style.

Emily Kunst
Assistant Attorney General
Open Records Division

EK/tdw

Ref: ID# 678044

Enc. Submitted documents

c: Requestor
(w/o enclosures)