



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 25, 2018

Mr. James Kopp
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2018-01657

Dear Mr. Kopp:

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# 692985 (ORR Nos. W189706, W189798, & W189898).

The City of San Antonio (the "city") received three requests from different requestors for a specified audit. The third requestor additionally seeks information pertaining to a specified investigation.¹ The city states it is releasing some of the requested information.² The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

¹The city states it sought and received clarification of the information requested by the third requestor. See Gov't Code § 552.222 (providing 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) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The city informs us it released the requested audit, and thus withdraws its request for ruling with regard to the first two requests.

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. Section 552.101 encompasses information protected by section 143.089 of the Local Government Code. The city states it is 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 police officer employed by a civil service city: one that must be maintained as part of the 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). 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 any instance 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. A letter of reprimand does not constitute discipline under chapter 143. *See* Attorney General Opinion JC-0257. 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 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). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer’s civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See* Local Gov’t Code § 143.089(b)-(c).

Section 143.089(g) authorizes a police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. *See id.* § 143.089(g). Section 143.089(g) provides as follows:

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 a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined section 143.089(g) made these records confidential. *See* 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting confidentiality under Local Gov't Code § 143.089(g) to “information reasonably related to a police officer's or fire fighter's employment relationship”); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

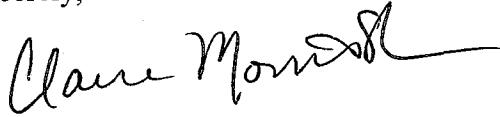
The present request for information was received by the city, which has access to civil service files maintained under section 143.089(a) and personnel files maintained by the city's police department under section 143.089(g) of the Local Government Code. Therefore, the request encompasses all such files. The city states the submitted information is maintained in the city's police department's internal files for the named officer and other officers, created pursuant to section 143.089(g). We note some of the submitted information pertains to an investigation of the named officer, which the city informs us resulted in the indefinite suspension of the named officer. Thus, this type of information is subject to section 143.089(a) and must be placed in the officer's civil service file. *See* Local Gov't Code § 143.089(a)(1), (3). The city states it will release responsive records related to the named officer's suspension, pursuant to an agreement with the requestor on redactions. Thus, we understand records related to the investigation of the named officer that resulted in his indefinite suspension have been placed in the civil service file and released to the requestor with agreed-upon redactions. In addition, the remaining information pertains to other officers, who the city informs us have not received discipline under chapter 143. Therefore, based on these representations and our review, we agree the submitted information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code on that basis.

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, appearing to read "Claire Morris Sloan", with a long horizontal flourish extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 692985

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)