



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 1, 2019

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2019-05741

Dear Ms. Grace:

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# 750252 (ORR# R007778).

The Austin Police Department (the "department") received a request for the requestor's personnel file. 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.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating 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. This section encompasses information protected by section 143.089 of the Local Government Code. You state the City of Austin (the "city") is a civil service city under

¹We note we asked the department to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the information submitted by the department pursuant to that request.

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)-(3). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. 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.

Id. 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 City of San Antonio*, 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).

You state the submitted information is contained within the department’s internal files maintained pursuant to section 143.089(g) of the Local Government Code. We note that, although section 143.089(e) provides police officers a right of access to their own civil service files maintained under section 143.089(a), this office has determined police officers do not have a right of access to their own internal files maintained by a police department pursuant to section 143.089(g). *See Open Records Decision No. 650 at 3 (1996)* (confidentiality provision of section 143.089(g) contains no exceptions). Thus, because the records at issue are maintained in the department’s internal files pursuant to section 143.089(g), the requestor does not have a right of access to his records under section 143.089(e). Accordingly, we find the submitted information is generally confidential under section 143.089(g) of the Local Government Code and must be withheld from disclosure under section 552.101 of the Government Code.

The requestor contends he has a special right of access to his personnel file under section 552.102(a) of the Government Code. In support of this assertion, the requestor relies on a sentence in section 552.102(a), which reads in part “that all information in the personnel file of an employee of a government body is to be made available to that employee or the employee’s designated representative as public information is made available under [the Act].” Gov’t Code § 552.102(a). However, this language is intended to allow a person or person’s authorized representative a right of access to information relating to the person that is protected from public disclosure for the purpose of protecting that person’s privacy interests. *See id.* § 552.102(a); *see also, e.g., id.* § 552.023 (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”). We note section 143.089(g) is not a privacy based exception. Thus, because the submitted records are maintained pursuant to section 143.089(g), the right of access under section 552.102(a) does not apply to this information.

Additionally, the requestor argues the Meet and Confer Agreement (the “agreement”) between the city and the Austin Police Officers Association provides the requestor a right

of access to the information at issue. You state the agreement was created pursuant to chapter 143 of the Local Government Code.² *See* Local Gov't Code §§ 143.301 *et seq.* Subchapter I includes section 143.307, which provides as follows:

(a) An agreement under this subchapter supersedes a previous statute concerning wages, salaries, rates of pay, hours of work, or other terms and conditions of employment to the extent of any conflict with the statute.

(b) An agreement under this subchapter preempts any contrary statute, executive order, local ordinance, or rule adopted by the state or a political subdivision or agent of the state, including a personnel board, a civil service commission, or a home-rule municipality.

(c) An agreement under this subchapter may not diminish or qualify any right, benefit, or privilege of an employee under [chapter 143 of the Local Government Code] or other law unless approved by a majority vote by secret ballot of the members of the association recognized as a sole and exclusive bargaining agent.

Id. § 143.307; *see id.* § 143.302(1) (defining “association”). Section 19 of article 18 of the agreement, titled “Access to IAD File,” provides, in part:

If an Officer appeals a disciplinary action, and provides a written request, the [city] will provide to the Officer and his/her representative a copy of the un-redacted [Internal Affairs Division (“IAD”)] file within 5 business days of receiving the request.

Agreement art. 18, § 19; *see generally id.* art. 18 (“Disciplinary Actions, Demotions & Appeals”). You inform us the requestor was indefinitely suspended by the Chief of Police, has appealed the disciplinary action, and this appeal is pending. You state the department acknowledges the requestor is entitled to a copy of the administrative investigation conducted by the IAD that underlies the disciplinary action, and that complete copies of the IAD investigation have been provided to the requestor and his legal counsel. We thus understand you to argue that the “IAD file” as contemplated by section 19 of article 18 of the agreement refers to the IAD administrative investigation underlying the requestor’s disciplinary action. You argue, however, neither the agreement nor any provision of chapter 143 of the Local Government Code give the requestor a right of access to the contents of other portions of his departmental personnel file. You state the submitted information consists of routine personnel information that is not related to the IAD investigation underlying the requestor’s disciplinary action, and assert this information is confidential under section 143.089(g) of

²You have provided a copy of the relevant agreement.

the Local Government Code. You thus maintain the requestor does not have a right of access to this information pursuant to the agreement. Based on your representations and our review, we find section 19 of article 18 of the agreement does not grant the requestor a right of access to any portion of the submitted information.

In summary, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.³

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 750252

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer the requestor to the civil service director or the director's designee.