



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 15, 2019

Mr. Evan D. Reed  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2019-32333

Dear Mr. Reed:

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# 796852 (City's Reference #19-1026-10701).

The El Paso Police Department (the "department") received a request for information pertaining to a named officer. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

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. This section encompasses section 143.089 of the Local Government Code. The department indicates the City of El Paso is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). 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).<sup>1</sup> *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 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 are subject to release under the Act. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

The submitted information relates to a disciplinary action taken against the officer at issue that was overturned by arbitration. The department asserts it maintains this information in its internal files as authorized by section 143.089(g). However, the submitted information contains the decision of the arbitration hearing examiner. Pursuant to section 143.1016 of the Local Government Code, a police officer or firefighter 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 “[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) (hearing examiner appeals must be held in public like commission proceedings because hearing examiner has same duties and powers as commission pursuant to section 143.057). Thus, the submitted hearing examiner's decision is subject to section 143.011(c) and is a public record. Although the department claim the information at issue is confidential under section 143.089(g) 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 examiner's appeal decision at issue in this ruling, not section 143.089(g). Therefore, the city must release the submitted decision of the hearing examiner under section 143.011 of the Local Government Code. The department 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.

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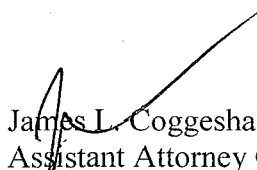
<sup>1</sup> Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055.

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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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/rm

Ref: ID# 796852

Enc. Submitted documents

c: Requestor  
(w/o enclosures)