



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 19, 2019

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2019-36102

Dear Ms. Pemberton:

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# 804203 (PIR# W030206).

The City of Killeen (the "city") received a request for the requestor's personnel file. You state the city has released 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.

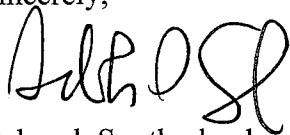
Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by section 143.089 of the Local Government Code. You state the city 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 firefighter employed by a civil service city: one that must be maintained as part of the firefighter's civil service file and another that the fire department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). Under section 143.089(a), the firefighter's civil service file must contain certain specified items, including commendations, periodic evaluations by the firefighter'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 fire department investigates a firefighter's misconduct and takes disciplinary action against a firefighter, 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

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). Based on your representations and our review, we find some of the submitted information is confidential under section 143.089(g). However, we note some of the information at issue, which we marked, consists of documents relating to misconduct that resulted in disciplinary action against the firefighter. 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)(2). In this instance, the request was received by the city, which has access to the files maintained under both sections 143.089(a) and 143.089(g). Therefore, the request encompasses both of these files. Thus, the city may not withhold the information maintained in 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. Accordingly, with the exception of the information we marked, which must be released to the requestor, the city 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.

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,



Deborah Southerland
Assistant Attorney General
Open Records Division

DS/gw

Ref: ID# 804203

Enc. Submitted documents

c: Requestor
(w/o enclosures)