

D-1-GN-18-004018

CAUSE NO. _____

CITY OF FORT WORTH, TEXAS,
Plaintiff,

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§
§

IN THE DISTRICT COURT

V.

TRAVIS COUNTY, TEXAS

KEN PAXTON, ATTORNEY
GENERAL OF TEXAS,
Defendant.

200TH
_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION FOR DECLARATORY JUDGMENT AND
REQUEST FOR PROTECTIVE ORDER**

TO THE HONORABLE JUDGE:

Pursuant to the provisions of Chapter 552 of the Texas Government Code, the City of Fort Worth (“City”) files this petition for declaratory judgment to (1) declare that the information at issue in this lawsuit is excepted from public disclosure and (2) to grant the City relief from compliance with Texas Attorney General Open Records Letter Ruling OR2018-15663, AG No. 716440, and in support of this petition shows as follows:

I. Preliminary Statement

1. The City seeks relief from an Attorney General’s ruling that requires the City to release information that is confidential and not subject to public disclosure under Chapter 143 of the Texas Local Government Code.

II. Discovery Level

2. Discovery is intended to be conducted under a Level Three (3) Discovery Control Plan in accordance with Rule 190 of the Texas Rules of Civil Procedure.

III. Parties

3. Plaintiff City of Fort Worth, Texas, is a home-rule municipal corporation located in Tarrant, Denton, Parker, and Wise Counties, Texas, duly incorporated under the Constitution and laws of the State of Texas, and the Charter of the City of Fort Worth adopted December 11, 1924, as amended.

4. Defendant is the Honorable Ken Paxton, Attorney General of the State of Texas. He may be served with citation at 300 West 15th Street, Austin, Texas 78701, with a copy to Katherine Stark, Attorney, Open Records Division, at 300 West 15th Street, Austin, Texas 78701-1649.

5. Jody Barr (“Mr. Barr” or the “Requestor”) is not a party to this lawsuit, but the individual who presented the City of Fort Worth with the request for public information that gives rise to this suit.

IV. Required Notice to Requestor

6. Mr. Barr’s address is 908 W. Martin Luther King Blvd., Austin, Texas 78701, and, under section 552.325(b) of the Government Code, the City will make a timely good-faith effort to notify him by certified mail of the following:

- (1) the existence of the suit, including the subject matter and cause number of the suit and the court in which the suit is filed;
- (2) Mr. Barr’s right to intervene in the suit or to choose to not participate in the suit;
- (3) the fact that the suit is against the Attorney General; and
- (4) the address and phone number of the office of the Attorney General.

V. Venue

7. Venue is proper in Travis County under section 15.002(a)(2) of the Texas Civil Practice and Remedies Code, and under Chapter 552 of the Texas Government Code. Section 552.353(b)(3) requires a governmental body to file its petition for a declaratory judgment seeking relief from compliance with a decision of the Attorney General in a District Court in Travis County.

VI. Factual and Procedural History

8. On April 10, 2018, the City received a written request from Mr. Barr for “records that would reveal the date, time, incident location, officer name, complainant name, details of allegations, complaint status, Fort Worth Police Department personnel involved in reviewing the complaint, and the outcome of all use of force cases from January 1, 2015 to the date the request is closed.” A true and correct copy of the request is attached as Exhibit “A.” The City believed that portions of the requested information were excepted from public disclosure under section 552.101 of the Texas Government Code in conjunction with Chapter 143 of the Texas Local Government Code.

9. On April 24, 2018, the City of Fort Worth requested a decision from the Attorney General pursuant to section 552.301 of the Texas Government Code and submitted a brief along with supporting documents. The City argued that a portion of the information and records requested were excepted from disclosure under section 552.101 of the Texas Government Code because the records fell under section 143.089(g) of the Texas Local Government Code. A true and correct copy of the City’s request to the Attorney General is attached as Exhibit “B.”

VII. Basis for Suit

10. On July 2, 2018, the Attorney General issued Open Records Letter Ruling No. OR2018-15663, which the City received on July 5, 2018. A true and correct copy of this letter ruling is attached as Exhibit “C.” The Attorney General opined that the City could not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Texas Local Government Code because the information is maintained independently of the department’s internal personnel files, such information is not confidential under section 143.089(g) of the Texas Local Government Code.

11. Only July 13, 2018, the City of Fort Worth, in response to Attorney General Open Records Letter Ruling No. OR2018-15663, submitted a clarification brief to the Attorney General Office to demonstrate that the records requested are confidential under Chapter 143 of the Texas Local Government Code and are excepted from disclosure. A true and correct copy of the clarification brief is attached as Exhibit “D.” To this date, the City has not received any response from the Attorney’s General Office concerning the City’s clarification brief.

VIII. Issue Presented

12. The City seeks relief from an Attorney General’s ruling that requires the City to release information that the City believes is confidential under section 143.089(g) of the Texas Local Government Code. The information is related to a police department investigation of an officer that did not result in discipline, and is not kept outside of the police department’s file.

13. Section 552.101 of the Texas Government Code excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes, such as section 143.089 of the Local Government Code. 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. 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.

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 that section 143.089(g) made these records confidential. *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 section 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 (addressing functions of Local Gov't Code section 143.089(a) and (g) files).

14. The City argues that the requested information is “G-file” information that falls under section 143.089(g) of the Texas Local Government Code and that releasing the information in accordance with Texas Attorney General Open Records Letter Ruling OR2018-15663 would violate section 143.089(g) of the Texas Local Government Code.

IX. Declaratory-Judgment Request

15. The City requests that the Court declare that (1) the remaining unreleased documents requested by Mr. Barr are confidential information under Section 552.101 of the Texas Government Code in conjunction with Chapter 143 of the Texas Local Government Code and are not subject to disclosure under the Public Information Act, and (2) the City is not required to comply with Attorney General’s Open Records Letter Ruling No. OR2018-15663.

X. Protective-Order Request

16. The disclosure of the requested information would constitute an improper disclosure of confidential information excepted from the Public Information Act. Chapter 552 of the Government Code authorizes the Court to issue a protective order preventing disclosure of the requested information pending a final determination by the Court. Section 552.322 states that “[i]n a suit filed under this chapter, the court may order that the information at issue may be discovered only under a protective order until a final determination is made.” The City requests that this Court issue a protective order declaring that the information at issue is discoverable only under the protective order until the Court renders a final determination of the confidential nature of the information.

XI. In Camera Inspection of Information

17. Chapter 552, section 552.3221, of the Government Code states in part that, “in any suit filed under this chapter, the information at issue may be filed with the court for in camera inspection as is necessary for the adjudication of the case. Upon receipt of the information at issue for in camera inspection, the court shall enter an order that prevents release to or access by any person other than the court, a reviewing court of appeals, or parties permitted to inspect the information pursuant to a protective order. The order shall further note the filing date and time.” Therefore, pursuant to section 552.3221, the City will separately file the “information at issue” for in camera review by the court.

XII. Prayer

18. The City requests that the Attorney General be cited to appear and answer, and that the City have the following:

- (1) A protective order declaring that the records and information at issue are discoverable only under the protective order until a final determination of the confidential nature of the information is made;
- (2) A declaration that the specified records and information responsive to Mr. Barr’s request falls under Section 143.089(g) of the Texas Local Government Code and is confidential and not subject to disclosure;
- (3) A declaration under Section 552.353(b) of the Texas Government Code that grants the Plaintiff relief from compliance with Open Records Letter Ruling OR2018-15663;

- (4) Attorney's fees;
- (5) Costs of lawsuit; and
- (6) Such other and further relief under law and equity to which the City may be justly entitled.

Respectfully submitted,

/s/ Christopher Austria

CHRISTOPHER AUSTRIA

Assistant City Attorney

State Bar No. 24082643

Christopher.austria@fortworthtexas.gov

HARVEY L. FRYE, JR.

Assistant City Attorney

State Bar No. 00795150

Harvey.Frye@fortworthtexas.gov

CITY OF FORT WORTH

200 Texas Street

Fort Worth, Texas 76102-6311

817-392-7600

817-392-8359 (fax)

Attorneys for Plaintiff City of Fort Worth

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

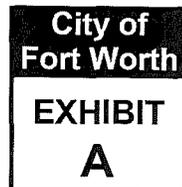
BEFORE ME, the undersigned authority on this day personally appeared Christopher Austria, who, after being by me duly sworn on his oath, deposed and said that he is an attorney for the City of Fort Worth, Plaintiff in the above-entitled and numbered cause; that he has read the above and foregoing petition and that the facts contained therein are within his personal knowledge and are true and correct.

Christopher Austria
Christopher Austria

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, under my hand and seal of office this 1st day of August, 2018.



Teresa M John
Notary Public in and for
The State of Texas



City of Fort Worth
Public Information Request
(web form)

Date: 4/10/2018 8:24:48 AM **Request Number:** W071304-041018 **Due Date:** 4/24/2018

REQUESTOR IDENTIFICATION:

Name: Mr. Jody Barr
Company Name: KXAN
Address: 908 W Martin Luther King Blvd
Austin TX 78701
Telephone: 512-269-1557
Email: jody.barr@kxan.com

REQUEST DETAILS:

Category of Records Requested: Police Records

Description of Records Requested:

Dear Records Custodian:

This is a request under the Texas Public Information Act, Â§6252-17a et seq., to inspect and perhaps copy the following public records:

Records that would reveal the date, time, incident location, officer name, complainant name, details of allegations, complaint status, Fort Worth Police Department personnel involved in reviewing the complaint, and complaint outcome of all use of force cases. The records we seek would have been produced between Jan. 1, 2015 and the date this request is closed. If the records exist in an electronic format, we'd prefer receiving the requested information in that format. This request is made in the public interest and we'd ask that any fees associated with fulfilling this request be waived.

Please do not hesitate contacting me if you have any questions regarding the scope of this request.

Sincerely, Investigative Reporter KXAN TV Jody.barr@kxan.com

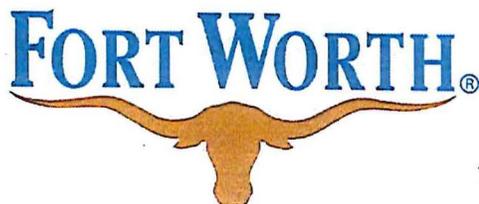
Delivery Method Preferred: Electronic by Email

Consent to Exclusions or Redactions:

The City is prohibited from releasing some types of information. In an effort to expedite your request, please check the box if you agree to exclude or redact from the requested records all of the information found in these exclusion categories. [Click here to see complete list of all exemptions](#)

I Agree to All: Yes

I Agree to Some: No (If yes, see FOIA for details)



Thomas Royce Hansen
Assistant City Attorney

Phone (817) 392-7600
Thomas.Hansen@fortworthtexas.gov

April 24, 2018

Honorable Ken Paxton
Texas Attorney General
ATTN: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Certified Mail No.: 7016 2140 0000 1153 6841

Re: City of Fort Worth Public Information Request No. W071304 from Jody Barr
Request for Specified Records Involving Use of Force Cases Within a Specified Time
Frame

Dear Attorney General Paxton:

On April 10, 2018, the City of Fort Worth (the "City") received a written request from Jody Barr (the "requestor") for specified data points regarding use of force cases within the City of Fort Worth for a specified amount of time. Exhibit "A" contains a certification of the date the City received the request. A copy of the request is included as Exhibit "B."

The City will release a portion of the information requested.¹ However, the City believes that the responsive records are excepted from disclosure under section 552.101 of the Texas Government Code in conjunction with section 143.089(g) of the Texas Local Government Code. Therefore, the City is seeking a ruling from your office in accordance with section 552.301 of the Texas Government Code. Exhibit "C" contains the information at issue.

Records pertaining to investigations that did not result in discipline are confidential.

Section 552.101 of the Texas Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes, such as section 143.089 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

¹ Any responsive records that were considered "A" File under Chapter 143 will be released to the requestor.

OFFICE OF THE CITY ATTORNEY

The City of Fort Worth ★ 200 Texas Street ★ 3rd Floor ★ Fort Worth, Texas 76102
817-392-7600 ★ Fax 817-392-8359

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; *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 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. § 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 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 (addressing functions of Local Gov't Code§ 143.089(a) and (g) files).

The City is a civil service city under chapter 143 of the Local Government Code. The Fort Worth Police Department has informed my office that different methods of reporting use of force incidents have been used by the Police Department. Before 2012, police officers would indicate on the police report software system that force was used in connection with the incident being documented in the police report. By checking the use of force checkbox, the software system would automatically generate a use of force form for the officer's supervisor to print out. An example of those forms is enclosed as Exhibit "D." In 2012, the Police Department implemented the IA Pro software system. The IA Pro system contains the Blue Team reporting module which allows for the creation of use of force reports and databases. Examples of the use of force forms generated from Blue Team module are enclosed as Exhibit "E."²

After the creation of a use of force incident in the IA Pro system, both the use of force form and a summary of the use of force incident and review are maintained in the IA Pro system. The IA Pro system can also generate a database with selected data fields being pulled from the use of force summaries. An example of a use of force summary is enclosed as Exhibit "E."^{3 4} The use of force forms and summaries are maintained in different locations within the IA Pro system depending upon the status of the review of the officer's conduct. The forms are maintained with the Use of Force sub-module if no policy violations are found. If a policy violation may have occurred, the use of force summary and the corresponding use of force form are moved to the Complaint sub-module. If an allegation is sustained against the officer, regardless of whether discipline is imposed, then the summary and corresponding use of force form are maintained in the Discipline sub-module.

Use of force forms and summaries contain a summary of incident and identification of the officers, citizens and witnesses involved. Use of force forms and summaries are reviewed by an officer's chain of command. The review is conducted to determine whether the use of force by the officer was in compliance with the City's policies. The use of force forms and summaries indicate the determination by each member in the officer's chain of command of

² The Police Department has been converting all of the paper copies of use of force forms into the IA Pro system.

³ The use of force forms themselves are linked to and accessible from the summary of the incident.

⁴ The database that can be generated from these reports is what is at issue with this specific request and is enclosed as Exhibit "C."

whether the use of force was in compliance with the Department's policies. If a determination is made by the chain of command that the use of force does not comply with the Department's policies, an internal affairs investigator is assigned to investigate the incident and upon conclusion of the investigation, the chain of command makes recommendations for disciplining the officer within the use of force forms and summaries.

In addition to a review for compliance with City policies, the Police Department's General Orders require use of force reports to be reviewed by Deputy Chiefs to determine if there is a need for changes in departmental procedures, additional training for the officer or a referral to the department psychologist. The General Orders also require all use of force reports to be forwarded to the Police Department's Training Division to review to ensure that the Training Division has the most current information available with report to training methods and curriculums. The General Orders also allow a specific use of force incident to be evaluated by the Training Division. The General Orders further require Assistant Chiefs to conduct periodic audits of use of force incidents to ensure that the objections of management review are being met. Copies of the last several versions of the Police Department's General Orders for report use of force incidents are enclosed as Exhibit "F."

The only individuals who have access to the use of force forms and summaries are those in an officer's chain of command, the internal affairs unit, and the training division. Paper copies of use of force summaries and forms are generally not maintained by the Police Department. However, old copies of use of force forms that have not yet been scanned into the IA Pro software system are still in existence. In addition, copies of use force forms and summaries that resulted in discipline in accordance with chapter 143 of the Local Government Code are maintained in the officer's civil service file in accordance with subsection 143.089(a).

The records submitted as Exhibit "C" consists of an excel file database generated by the IA Pro software system that compiles all use of force reports dating back to 2015 and the data held within those reports. The IA Pro system allows for individual data points to be selected to create a customized database. The records are maintained in confidence by the Department for their own use. The internal affairs investigations or cases, if any, involve all incidents where a Taser was used by a Fort Worth Police Officer. In each case, either the investigation determined the allegations to be unfounded or the allegations did not result in discipline under Chapter 143.

The Fort Worth Police Department asserts that use of force database generated from the IA Pro system contained in Exhibit "C" reports incidents that did not result in discipline under chapter 143 of the Local Government Code and are therefore confidential pursuant to section 143.089(g).⁵ The Fort Worth Police Department further asserts that only those use of

⁵ Your office has ruled previously that similar records held in the manner described above were confidential in OR2017-05226.

Honorable Ken Paxton
CFW PIR No. W071304 Barr, J.
April 24, 2018
Page 5 of 5

force forms and summaries that involve incidents that resulted in discipline become part of an officer's civil service file maintained in accordance with subsection 143.089(a). To the extent your office determines that the use of force database contained in Exhibit "C" are administrative files and not personnel files, the Fort Worth Police Department asserts that the portions of the use of force forms and summaries showing the chain of command's review, conclusions and recommendations on incidents that did not result in discipline under chapter 143 must be withheld in accordance with section 143.089(g).

Respectfully submitted,



Thomas Royce Hansen
Assistant City Attorney

Enclosure

c: Mr. Jody Barr
KXAN
908 W. Martin Luther King Blvd.
Austin, Texas 78701

via electronic mail: jody.barr@kxan.com



KEN PAXTON
ATTORNEY GENERAL OF TEXAS



July 2, 2018

Mr. Thomas Royce Hansen
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2018-15663

Dear Mr. Hansen:

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# 716440 (PIR No. W071304).

The City of Fort Worth (the "city") received a request for information pertaining to use of force incidents during a specified time period. You state the city 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.

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. 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 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 (2000). 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).

You state the submitted information consists of a database containing data compiled from use of force forms and summaries pertaining to incidents involving the use of a Taser. You state this information is gathered from the city's police department's (the "department") internal files maintained for department officers pursuant to section 143.089(g) of the Local Government Code. However, you also state "[t]he use of force forms and summaries are maintained in different locations within the IA Pro system depending on the status of the review of the officer's conduct." Thus, the information at issue is also maintained independently from the department's internal personnel files. The present request does not specifically seek information from officers' department personnel files. Rather, the requestor generally seeks certain information pertaining to use of force incidents. The city may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Accordingly, because the information at issue is maintained independently of the department's internal personnel files, such information is not confidential under section 143.089(g). Therefore, the city may not withhold the information at issue under section 552.101 of the Government Code on that basis. As you raise no further exceptions to disclosure, the city must release the submitted information.

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,



Katherine Stark
Attorney
Open Records Division

KS/som

Ref: ID# 716440

Enc. Submitted documents

c: Requestor
(w/o enclosures)



Thomas Royce Hansen
Assistant City Attorney

Phone (817) 392-7600
Thomas.Hansen@fortworthtexas.gov

July 13, 2018

Honorable Ken Paxton
Texas Attorney General
ATTN: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Certified Mail No.: 7016 2140 0000 1152 2554

Re: Clarification of Attorney General Open Records Letter Ruling OR2018-15663, AG ID No. 716440 City of Fort Worth Public Information Request No. W071304 from Jody Barr Request for Specified Records Involving Use of Force Cases Within a Specified Time Frame

Dear Attorney General Paxton:

The City of Fort Worth (the "City") received a written request from Jody Barr (the "requestor") for data points involving use of force cases for a specified time frame. The City timely requested a ruling from your office and provided documents for your review. In its brief to your office, dated April 24, 2018 ("Brief"), the City asserted that the records at issue are confidential pursuant to section 143.089 of the Texas Local Government Code because they relate to summaries of internal investigations of officer conduct that did not result in discipline, as defined by Chapter 143 of the Local Government Code. The City also provided an explanation of the City's internal records system called "IA Pro" used to track use of force allegations, citizen complaints, and other Internal Affairs investigations. The City received Attorney General Open Records Letter Ruling OR2018-15663 dated July 2, 2018, regarding this request; the request was assigned AG ID #716440. For the reasons explained below, the City now submits this request for clarification regarding OR2018-15663.

The ruling states "the information at issue is also maintained independently from the Fort Worth Police Department's ("Department") internal personnel files. The present request does not specifically seek information from officers' department personnel files. Rather, the requestor generally seeks certain information pertaining to use of force incidents." However, the information requested, including the identity of the reviewing officers in the chain of command review and the status of the complaint, can only be ascertained from the IA Pro system, which is not maintained independently from the department's personnel file. The City has included additional information to explain the City's record keeping system in better detail and the application of section 143.089(g) of the Texas Local Government Code to the information maintained within it. The City maintains that the requested information is "G-file" information under section 143.089(g) of the Texas Local Government Code and that the City is unable to

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release the information in accordance with the ruling without violating section 143.089(g) of the Texas Government Code.

The City has resubmitted the records at issue as Clarification Exhibit "A"; these records were originally submitted as Exhibit "C" to the Brief. Additionally, the City has added additional markings to better explain how these records are created, maintained, accessed, and the application of section 143.089(g) to them.

Information contained in the IA Pro system is generated for the Department's use by members and officers of the Department. One way an entry is created in the IA Pro system, is by a supervisor documenting that an officer used force during an incident. In this situation, an officer, per the City's general orders, is required to mark a specific box on his offense report indicating that use of force was used. The officer is also required to notify their supervisor of the use of force. Once the supervisor is notified by the officer, the supervisor is responsible for entering a "blue team" report within the IA Pro system. Important to note, no report is created in the IA Pro system by virtue of the officer indicating that force was used within the offense report; a report within the IA Pro system is only created by an individual once the use of force is reported. This report is not generated or a duplicate of what the officer includes in the offense report, but is the notes, observations, and conclusions of the reviewing chain of command.

A second way an entry is created within the IA Pro system is when a citizen makes a "citizen's complaint" to the Internal Affairs unit, supervisor, or a member of the police department. Once a citizen makes a complaint to the Department, a Department employee will enter the information into the IA Pro system, and the complaint is reviewed up the chain of command to determine whether discipline will be issued against the officer.

Further, the Internal Affairs section of the Department can initiate an investigation into an incident on their own. In this case, the Internal Affairs investigator assigned to the investigation will create a report in the IA Pro system and then send his notes, report, conclusions, and recommendation up the chain of command for review.

Any document that is created in the IA Pro system (including blue team reports) are not kept independently of the IA Pro system. The IA Pro system is used specifically and only for the department's use. Therefore, the City asserts that the information kept in the IA Pro system is G-file information to the extent it did not result in discipline as defined by chapter 143 of the Local Government Code. One point that may have led to confusion in the City's first brief is an explanation of different "modules" that exist within the IA Pro system; however, the City wants to make clear that the IA Pro system is used internally to document any Internal Affairs investigations for any violation of department policy, documenting entries made by an officer's supervisor to document Use of Force incidents as well as documenting Officer-involved auto accidents, and pursuits for the purpose of chain-of-command review as to whether any violations of department policy occurred during these incidents. This information exists nowhere else and is never taken out of the IA Pro system.

Honorable Ken Paxton
CFW PIR No. W071304 Barr, J.
July 13, 2018
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Further, as mentioned above, the ruling states that “the present request does not specifically seek information from officers’ department personnel files. Rather, the requestor generally seeks certain information pertaining to use of force incidents.” The requestor has specifically asked for the “officer name, complainant name, details of allegations, complaint status, Fort Worth Police Department personnel involved in reviewing the complaint, and complaint outcome of all use of force cases.” The City asserts that the requested information is very specific regarding the process of review, investigation summary, and outcome of an internal investigation involving an officer. It may be true that certain generic information may exist regarding a specific incident in both the offense report and a blue team report, such as the date of the incident, the type of force used, location, and time however the City wants to make clear that any specific information regarding a use of force incident is held only within the IA Pro system.

An example has been provided to show the difference between an IA Pro Blue Team report generated by an officer’s supervisor as well as one generated by Internal Affairs after a Citizen Complaint. It is the information from the blue team report that can be pulled into the database which is responsive to this request. The offense reports for these individual cases have also been provided to show that the entries in the blue team report are unique and the same information does not exist outside of the IA Pro system. These records are attached as Clarification Exhibit “B.”

For these reasons, the City requests clarification on whether OR2018-15663 should be read to require the City to release information that is kept only for the Department’s use, involves information related to a Department investigation of any officer that did not result in discipline, and is not kept outside of the IA Pro system. The City maintains that these records may not be released without violating Chapter 143 of the Local Government Code.

Respectfully submitted,



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Enclosure

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