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OPINION COMMITTEE



**STATE of TEXAS
HOUSE of REPRESENTATIVES**

FILE # MI-46350-10
I.D.# 46350

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February 18, 2010

RQ-0869-GA

The Honorable Gregg Abbott
Attorney General, State of Texas
P. O. Box 12548
Austin, TX 78711-2548

Re: Request for an Attorney General's Opinion regarding the ability of a civilian review committee to review certain information

Dear General Abbott:

There is a home-rule municipality in my district that is discussing the idea of establishing a police civilian review board. It is contemplated that this review board would be appointed by the governing body of the municipality and assigned to the police chief to serve as an advisory body to the chief in the review of disciplinary matters involving such issues as use of force, official oppression, discharging firearms, infliction of serious bodily injury to another or any other internal investigation assigned and approved by the chief. It is anticipated that, as part of the process, the board would have access to investigation information that would presumably include Tex.Loc.Gov't Code Ann. §143.089(g) (Vernon 1999) confidential information.

These discussions have raised the issue of whether this appointed civilian board can properly review §143.089(g) department personnel files as part of its function within the police department. In other words, is a board appointed by the governing body which is assigned to the police chief for purposes of operating within the internal processes of the department considered to be "for the department's use" as contemplated by the statute and not considered to be a person or agency outside the department from whom the subsection (g) file must be withheld. Or would the review of subsection (g) information, in this instance, constitute the disclosure of confidential information resulting in a potential misdemeanor violation for anyone who released the information?

Attorney General Opinion No. JC-0283 (2000) addresses the limited access to such information by the governing body, the chief executive and any other individual in the chain of command between the fire and police and the executive (which included the city attorney) as not being

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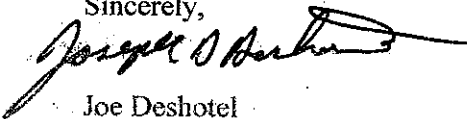
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persons "outside the department" for purposes of subsection (g) information. The premise of the scenario for the civilian review board, as proposed, is that the board would be appointed as an arm of the governing body (same as the chief executive and city attorney) exclusively for internal police department purposes with no intent that any information is to be disseminated to or discussed with anyone other than the police chief or those persons in the identified "chain of command." In this home-rule municipality, the city manager, who is appointed by the governing body, is the chief executive who appoints the heads of the police and fire departments. If the governing body can designate an appointed official to have access to subsection (g) files, it would be logical to conclude that they could appoint a board with the same authority.

We are interested in receiving your opinion on the subject. If you need further information, please do not hesitate to contact me at 409-781-9221.

Sincerely,



Joe Deshotel

Texas State Representative

22nd Legislative District