



TMHRA*WORKSHOP

EMPLOYEE RELATIONS FOR PUBLIC SAFETY

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TCOLE REQUIREMENTS AND PERSONNEL FILES



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CIVIL SERVICE PERSONNEL FILES

Maintained
under §143.089

§143.089(a) states that
a Civil Service Director
(or designee) shall
maintain a personnel
file on each fire fighter
and police officer

Known as the
“A” file



(A)OR DOCUMENT RELATING TO:

(1) A COMMENDATION, CONGRATULATION, OR HONOR BESTOWED ON THE FIRE FIGHTER OR POLICE OFFICER BY A MEMBER OF THE PUBLIC OR BY THE EMPLOYING DEPARTMENT FOR ANY ACTION, DUTY, OR ACTIVITY THAT RELATES TO THE PERSON'S OFFICIAL DUTIES.

(2) ANY MISCONDUCT BY THE FIRE FIGHTER OR POLICE OFFICER IF THE LETTER, MEMORANDUM, OR DOCUMENT IS FROM THE EMPLOYING DEPARTMENT AND IF THE MISCONDUCT RESULTED IN DISCIPLINARY ACTION BY THE EMPLOYING DEPARTMENT IN ACCORDANCE WITH THIS CHAPTER; AND

(3) THE PERIODIC EVALUATION OF THE FIRE FIGHTER OR POLICE OFFICER BY A SUPERVISOR.

SIMPLE CHECK LIST:

- Commendations**
- Disciplinary Action in accordance with Chapter 143**
- Performance Evaluations**

§143.089 “G” FILE

- A police or fire department may maintain a personnel file on a fire fighter or police officer . . . 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 police officer or fire fighter
- The department “shall” refer the requestor to the director

HYBRID PERSONNEL FILE MAINTENANCE



ELECTRONIC FILES

- Performance Evaluations are scanned and stored electronically.
- Commendations are scanned and stored electronically.



PAPER FILES

- Disciplinary Suspension is in paper form.
- Many police departments use IA Pro.

IS THERE LEGAL GUIDANCE CLARIFYING A v. G FILES?

Numerous
Informal
Attorney
General
Decisions

*Abbott v. City of
Corpus Christi,
109 S.W.3d 113
(Tex.App.-
Austin 2003, no
writ)*

Documents/IA
investigation
that support
formal
discipline must
be included in
the A file.

What is A File v. G file v. Typical “HR” files?

Section 143.089 A: listed in statute

Section 143/089 G: Everything else that relates to the officer/firefighter employment, that is maintained on an officer/firefighter specific basis and also maintained confidentially

Other files that are not described above and/or are not maintained on an officer/firefighter basis?

Training/Licensures with TCFP/TDSHS/TCOLE

Outside employment authorization

Certifications

A File

Original Application Packet &
Attachments
Civil Service Certification Form
Demotions
Periodic Evaluations
Salary Request Forms
Personnel Action Forms
Promotions
Resignation Letter
Suspensions & Related
Investigation
Indefinite Suspensions

Commendation Letters
Civil Service Rules & Regs.
Acknowledgment

G File

Informal discipline,
including written
reprimands and negative
directives

Initial Background
Investigation of Hired
Employees

Internal Investigation
Paperwork

Psychological Reports

Memo or Oral Reprimand

FFDE examinations

HR File

Birth Certificate
Driver License
SS Card
W-4 Form
First Report of Injury
Workers' Comp Info
Doctor's Releases
Physical Statement Forms
FMLA
All Policy/Document
Acknowledgments
Change of Address, Name &
Phone #
Employee Information
Sheet
Military Leave Orders
Jury Summons

TRAINING? Or ????

Outside Employment
Authorization
Offer Letters
L-2 & L-3 Forms
Continuing Education
Certifications
Applications for
Certification
Physical Fitness Records
Equipment Checklist
L-3p Declaration of
Psychological &
Emotional Health

IS THE PERSONNEL
“CONFIDENTIAL” FILE
THE SAME AS THE
DEPARTMENT’S “G”
FILE?



WHAT TO DO IF FORMAL DISCIPLINE IS OVERTURNED?

A v. G FILE

- Numerous informal AG rulings say “move documents from A file to departmental G file”

COMMISSION RECORDS

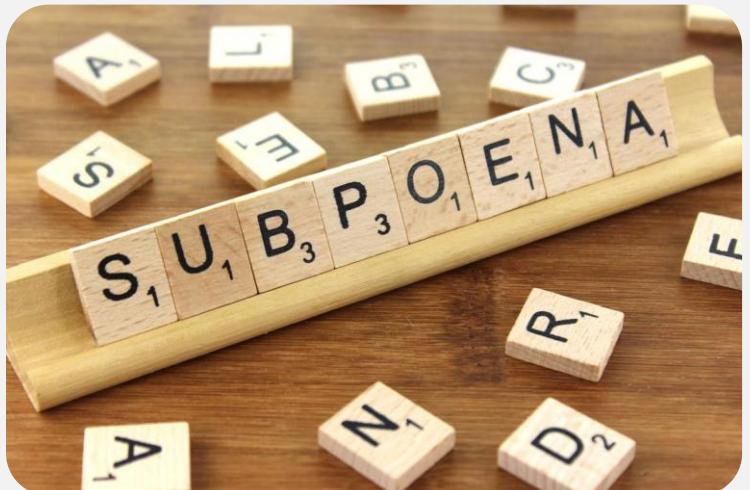
- Informal AG rulings have stated that the hearing examiner decision is a record of the Commission
- TLGC §143.010(h)
- TLGC §143.011

DOES AN OFFICER OR FIRE FIGHTER HAVE A RIGHT OF ACCESS TO THEIR “G” FILE?

- **NO**
- We have received numerous informal letter rulings from the AG, upholding the confidentiality of the “G” file
- AG agrees that the provisions in the PIA (§552.023, “Special Right of Access”) does not apply to the “G” file; neither does it apply to §143.089(e)

CONFIDENTIAL

WHAT IF I RECEIVE A SUBPOENA?



COURT PROCEEDING – INVOLVE YOUR LAWYERS!

- Check with PD if from DA
- Must file Motion to Quash/Motion for Protective Order
- Provide documents *in camera* to court – ONLY!
- Draft order for Court to submit with filing

TEXAS HAS ITS OWN BRADY LAW



What is *Brady*?

References US Supreme Court case *Brady v. Maryland* 1963

Prosecution has a duty to learn of and disclose to the defense all *favorable material* information known to government, including police [fire investigators]



Favorable info =
exculpatory information
OR impeachment
Must work with DA



MICHAEL MORTON ACT

- Code of Criminal Procedure Article 39.14 (h) & (k)
- Requires the *State* to disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state (including law enforcement records/personnel records) that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged.
- No requirement (unlike Brady) that information be “material”
- WIDE OPEN
- *Think about:*
 - Impact on disciplinary processes available to employees?
 - What do your job descriptions say about testifying in court?

WHY YOU SHOULD CARE . . .



Civil liability for *Brady* violations under §1983

Not for a prosecutor . . . absolute immunity, but . . .

Personal liability for everyone else involved . . . including Chiefs

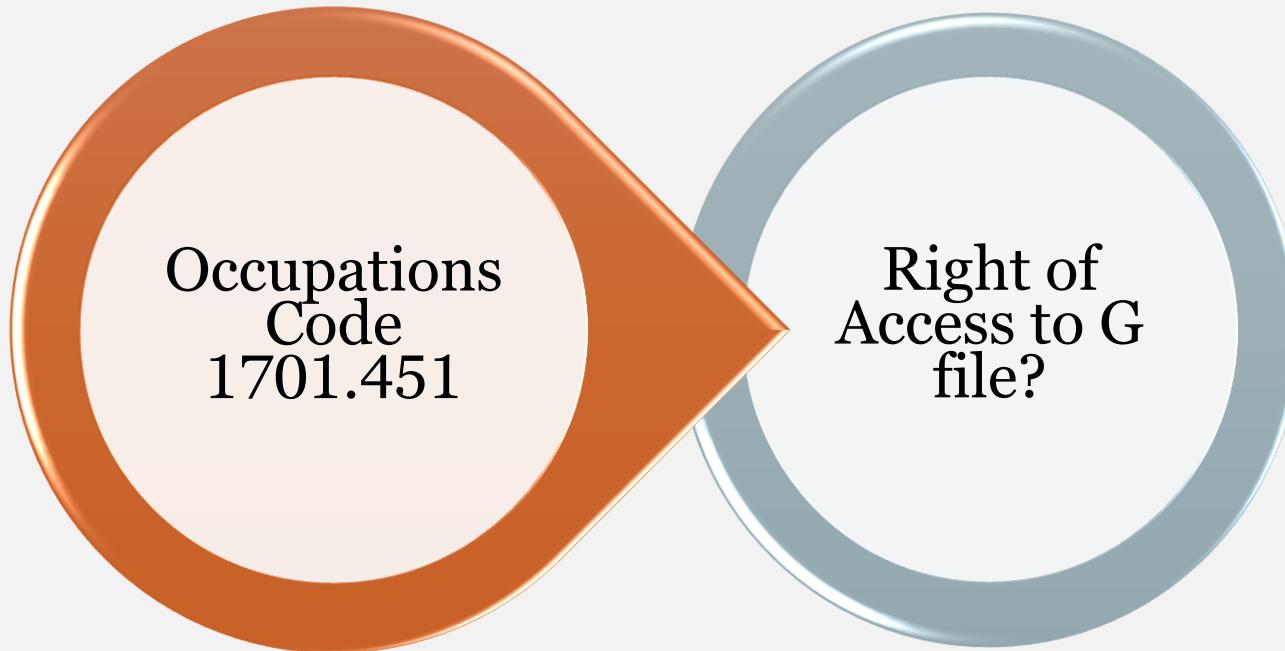


HIRING/ DISCOVERY

- Civil Service—consider adding a disqualifier:
 - "An applicant may not be certified for a beginning position with the _____ Police Department if he or she has been rejected as a witness by a criminal prosecutor for Brady violations and/or being placed on a Brady Disclosure list."
- Can add a question or questions about prior inclusion on a *Brady* list as part of background

WHAT ABOUT G FILES AND BACKGROUND INVESTIGATIONS?

PD



SB 1445/TCOLE SUNSET BILL MAJOR OVERHAUL (88R)

- Public License Lookup (Licensee Service Report database)
- Confidential Statewide Employment Database
 - License status records
 - Personnel Files
 - Misconduct Investigation Reports
- Designation of the National Decertification Index (IADLEST)
- Out-of-state POST records to be requested by TCOLE
- Removal of discharge categories (honorable, general, or dishonorable) from the Separation of Licensee (F-5) report

HIRING PROCEDURES TCOLE

- Tex. Occ. Code § 1701.4522
- Requirement to adopt model policy establishing procedures applicable to a law enforcement agency hiring a *licensee*

HIRING PROCEDURES TCOLE

- Model Policy combines 4 different statutes and rules regarding the background investigation and appointment process for ease of reference and provides some tips for best practices
 - Tex. Occ. Code § 1701.303
 - Tex. Occ. Code § 1701.451
 - 37 Tex. Admin. Code § 217.1
 - 37 Tex. Admin. Code § 217.7

HIRING – TCOLE MODEL POLICY BACKGROUND INVESTIGATOR

- Agency Background Investigator:
 - Provides Applicant's Authority to Release Information to others
 - Contacts each prior appointing agency and TCOLE for records (even if agency retention schedule may have passed)
 - Tip: Contact governing body for agencies no longer in existence to see if records still exist
 - Reviews files and records electronically through TCOLE Secure Share (TSS) or in person; by telephone is not sufficient
 - Tip: **Contact TCOLE Field Service Agent (FSA)** for assistance if another agency does not respond to TSS request
 - Creates Background Investigation Report

HIRING – TCOLE MODEL POLICY

- Agency Requests from TCOLE:
 - F5R History and Employment Verification (F5R)
 - Personal Status Report (PSR)
 - TCOLE license actions (cases)
 - Personnel Files (1701.4535)
 - Separation of Licensee (F-5) reports
 - Misconduct Investigation Reports (1701.4522)
 - Out-of-state POST records, if applicable

HIRING – TCOLE MODEL POLICY

Agency Obtains and Documents (1701.451):
Personnel Files (1701.4535), including previous employment applications, from each previous appointing agency

Proof that Applicant meets minimum standards (217.1)

Applicant has never been convicted of or placed on court-ordered community supervision or probation for:

- Felony or Class A misdemeanor
- Class B misdemeanor within the last 10 years
- Offense involving family violence

AGENCY OBTAINS DOCUMENTS

Applicant subjected to background investigation (217.7)

Academy: verify Applicant meets minimum standards by reviewing completed PHS, any known information, and contact with all previous enrolling entities

Agency: verify Applicant meets minimum standards by conducting a full background investigation

AGENCY OBTAINS DOCUMENTS

- Agency Obtains /Documents (cont.):
 - DD-214, if applicable
 - Criminal History Record Information (CHRI)
 - Pending warrants
 - Evidence of financial responsibility
 - Driving record from DPS
 - Proof of U.S. citizenship, etc.
 - 3 personal references and 2 professional references
 - National Decertification Index (IADLEST) check

PROVISIONAL HIRING PERIOD TCOLE

- Provisional Hiring Period
 - 90 days in length
 - Purpose: to review potential Misconduct Investigation Reports that had not been completed or submitted to TCOLE prior to appointment
 - Provisional hiring period is unrelated to any probationary hiring periods

HIRING PROCEDURES TCOLE

- Relevant Updated TCOLE Forms and Documents
 - Updated L-2 and L-3
 - Updated Authority to Release Information
 - Job Descriptions for Peace Officers, County Jailers, and Telecommunicators were developed for open enrollment academies to use for L-2s and L-3s

MODEL TCOLE PD POLICY PERSONNEL FILE

In the hands of the agency and for the purpose of determining confidentiality, the requested officer's records are distinguished as either personnel or department files. Under the model policies and existing civil service law, the requested records are characterized and correspondingly protected according to the following:

MODEL TCOLE PD POLICY PERSONNEL FILE = (A) – FILE

- Model policy applies civil service law to all cities:

The *personnel file* includes **only** the following:

- any letter, memorandum, or document relating to a commendation, congratulation, or honor bestowed on the license holder by a member of the public or by the employing agency for an action, duty, or activity that relates to the license holder's official duties;
- any misconduct by the license holder if the letter, memorandum, or document is from the employing agency and resulted in disciplinary action; and
- the periodic evaluation of the license holder by a supervisor.

Such information is equivalent to the (a)-file for civil service agencies and is subject to public disclosure.

MODEL TCOLE PD POLICY PERSONNEL FILE = (A) – FILE CONT.

- PERSONNEL FILE = (a) – FILE CONT.
- If a negative letter, memorandum, document, or other notation of negative impact is included in a license holder's personnel file:
 - The agency head or their designee shall notify the affected license holder within 30 days.
 - The license holder may file a written response to the negative document within 30 days of receiving that notice.
 - A license holder is entitled, on request, to a copy of any letter, memorandum, or document placed in the license holder's personnel file.

MODEL POLICY PD DEPARTMENT FILE = (G) - FILE

- In contrast, the *department file* protects the privacy interest and reputation of “innocent officers...from unsubstantiated innuendos and accusations.”
- For example, investigative materials related to misconduct that does not result in disciplinary action belong in the *department file*, not the *personnel file*.
- An agency may not release any information in the department file without the written consent or release of the law enforcement officer as part of a pre-employment background investigation with the exception to TCOLE as part of an ongoing investigation OR misconduct investigation reports.

SB 14/HB 14

- Law introduced to make all TCOLE licenseholders have A and G files (peace officers, jailers and telecommunicators)
- Not limited to civil service departments
- Police only

- DID NOT PASS
- Watch out for next legislative session

QUESTIONS?



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thank you!



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