



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 3, 2008

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2008-09059

Dear Ms. Byles:

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# 314647.

The City of Fort Worth (the "city") received a request for the complete personnel file of the requestor's client. The city claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert section 552.108(a)(1) of the Government Code excepts the submitted information from public disclosure. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). The civil service commission must maintain the peace officer's civil service file. *See* Local Gov't Code § 143.089(a). We note, however, you have submitted information that is maintained by the city's Civil Service Commission pursuant to section 143.089(a) of the Local Government Code. The police 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 which the department took disciplinary action against the police 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. In cases in which a police department investigates a peace officer's misconduct and takes disciplinary action against a police 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

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.). Section 143.089(e) grants a right of access to a police officer to “any letter, memorandum, or document placed in the person's personnel file.” See Local Gov't Code § 143.089(e). This office has interpreted this provision to grant a police officer an affirmative right of access to the information in his or her personnel file maintained under section 143.089(a). See Open Records Decision No. 650 at 2 fn. 2 (1996). In this instance, the requestor is the attorney representing the officer whose information is at issue. Because the requestor has a statutory right of access to his personnel file, the city may not withhold the information at issue under section 552.108. See Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act.)

Next, you argue that portions of the submitted information are confidential under common-law privacy. 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses common-law privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Indust. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Because section 143.089(e) of the Local Government Code provides the police officer with a statutory right of access, none of the submitted information may be withheld on the basis of common-law privacy.

Lastly, you assert the marked portions of Exhibit C-2 contain polygraph information. Section 552.101 encompasses information protected by other statutes. Section 1703.306 of the Occupations Code provides in relevant part the following:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

...

(b) The board or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Occ. Code § 1703.306(a)(1), (b). Section 1703.306(a) makes the information acquired from a polygraph examination in the submitted information confidential. However, we note that a portion of the information at issue consists of the polygraph examination information of the requestor's client. The city has the discretion to release the officer's information pursuant to section 1703.306(a)(1). See Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permits, but does not require, examination results to be disclosed to examinees). Thus, we are presented with a conflict between the requestor's right of access pursuant to section 143.089(e) of the Local Government Code and the confidentiality provision under section 1703.306 of the Occupations Code. Where information falls within both a general and a specific statutory provision, the specific statutory provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail. See Gov't Code § 311.026; *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 583 (1990), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Furthermore, the Code of Construction Act provides that "if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails." Gov't Code § 311.025(a). In applying the Code Construction Act, we note that section 1703.306 applies only to polygraph information, whereas section 143.089 applies to all personnel records of a peace officer. Furthermore, section 1703.306 was enacted after section 143.089(e) of the Local Government Code.<sup>1</sup> Thus, we find that section 1703.306 of the Occupations Code prevails over section 143.089(e) of the Local Government Code in this matter. Accordingly, the marked polygraph information is confidential and must be withheld under section 1703.306(a). However, the city has the discretion to release the polygraph information of the requestor's client pursuant to section 1703.306(a)(1).

In summary, the marked polygraph information must be withheld under section 1703.306 of the Occupations Code. The city may release the polygraph information of the requestor's client at its discretion pursuant to section 1703.306(a). The remaining information must be released to the requestor pursuant to section 143.089(e) of the Local Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

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<sup>1</sup>Act of May 31, 1989, 71<sup>st</sup> Leg., R.S., ch. 1248, § 84, 1989 Tex. Gen. Laws 4996, 5043 (Vernon) (codified as section 143.089 of the Local Government Code); Act of May 28, 1999, 76<sup>th</sup> Leg., R.S., ch. 388, § 1, 1999 Tex. Gen. Laws 2267, 2675 (Vernon) (codified as section 1703.306 of the Occupations Code).

governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

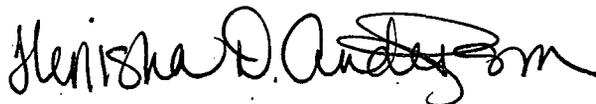
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Henisha D. Anderson  
Assistant Attorney General  
Open Records Division

HDA/eeg

Ref: ID# 314647

Enc. Submitted documents

c: Mr. Richard Carter  
CLEAT  
904 Collier  
Fort Worth, Texas 76102  
(w/o enclosures)