



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2008

Ms. Jerris Penrod Mapes
Assistant City Attorney
City of Killeen
402 North Second Street
Killeen, Texas 76541-5298

OR2008-15746

Dear Ms. Mapes:

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# 328005.

The Killeen Police Department (the "department") received a request for the personnel file of a named officer. You state that you have released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions 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. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code.¹ Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: 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). 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 *et seq.* In cases in which a police department investigates a police officer's misconduct and

¹You inform us that the department is a civil service department under chapter 143 of the Local Government Code.

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).

Subsection (g) of section 143.089 authorizes the 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.

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 that section 143.089(g) made the records confidential. *See id.* at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet.) (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 that the information submitted as Attachment D is held in a departmental file maintained under section 143.089(g).² Based on your representation and our review of the information at issue, we conclude that the department must withhold Attachment D under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

You assert that the named officer's civil service file, which you have labeled "Attachment E," contains Texas Commission on Law Enforcement Standards and Education ("TCLEOSE") forms subject to section 1701.454 of the Occupations Code. However, upon review, we find that Attachment E does not contain TCLEOSE forms. Therefore, no information may be withheld under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

You claim that portions of the information labeled as Attachment E are subject to section 521.051 of the Transportation Code. Section 521.051 provides that the "department may not disclose class-type listings from the basic driver's license file to any person" except in certain situations. *See* Transp. Code § 521.051. However, chapter 521 of the Transportation Code is applicable to records maintained by the Department of Public Safety. *See Id.* § 521.001 (defining "department" as Department of Public Safety). We note that the submitted information at issue is maintained by the department and not the Department of Public Safety. Therefore, we conclude that none of the submitted information may be withheld under section 521.051 of the Transportation Code. *See* Open Records Decision No. 618 (1993) (stating that the purpose of the statutory predecessor to section 521.051 "appears to be to relieve the [Department of Public Safety] of the administrative burden of compiling a list based primarily on location and the existence of traffic convictions[.]")

Section 552.117(a)(2) of the Government Code exempts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information you have highlighted, as well as the information we have marked, under section 552.117(a)(2) of the Government Code.

We note that Attachment E contains information subject to section 552.130 of the Government Code.³ This section provides:

²Although you refer to the section 143.089(g) file as "Attachment C" in your brief, you have marked the documents themselves as "Attachment D." Accordingly, we will refer to the documents as they are marked, rather than as they are described in your brief.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(a) Information is excepted from required public disclosure if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information we have marked within Attachment E under section 552.130 of the Government Code.

We note the submitted information contains a DD-214 form. Section 552.140 of the Government Code provides that a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See* Gov't Code § 552.140(a), (b). We have marked the DD-214 form. However, you do not inform us when the department came into the possession of this form. Therefore, the department must withhold the DD-214 form under section 552.140 if it came into the possession of the department on or after September 1, 2003. If the form was received by the department before September 1, 2003, then the department may not withhold it pursuant to section 552.140.

In summary, the department must withhold Attachment D under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Government Code. The department must also withhold the information marked within Attachment E under section 552.117 of the Government Code and the information we have marked under section 552.130 of the Government Code. If the DD-214 form we have marked came into the possession of the department on or after September 1, 2003, the form is subject to section 552.140 of the Government Code and the department must withhold it. The remaining information must be released.

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 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).

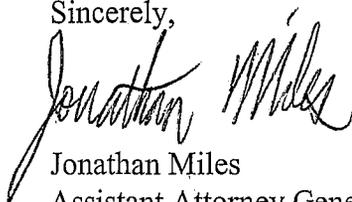
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 328005

Enc. Submitted documents

cc: Requestor
(w/o enclosures)