



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2009

Mr. Joe Torres, III
Attorney at Law
216 North Texas Boulevard, Suite 2
Alice, Texas 78332

OR2009-07974

Dear Mr. Torres:

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# 345589.

The City of Alice (the "city"), which you represent, received a request for a police dashboard camera video of a specified incident, and the departmental file of a named former city police officer. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted the requested dashboard camera video. Therefore, to the extent this information existed when the city received the present request, we assume that it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 143.089 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that a city's civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). You inform this office that the city is a civil service city under chapter 143 of the Local Government Code.

The police officer's civil service file must contain specific items, including commendations, periodic evaluations by the officer's supervisor, and documents from the employing department relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *See id.*

§ 143.089(a)(1)-(2). 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).¹ *Abbott v. City of 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 in 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 are subject to release under chapter 552 of the Government Code. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to a police officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted personnel records are maintained in the city's police department personnel file regarding the former officer. Based on this representation and our review of the submitted documents, we agree that the responsive records maintained in the department's files generally must be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

We note, however, that a portion of the submitted records pertain to an internal affairs investigation of the named former officer that resulted in disciplinary action against him, as well as periodic evaluations. As previously stated, all periodic evaluations and information pertaining to charges of misconduct that resulted in disciplinary action must be maintained in the officer's civil service file under section 143.089(a) of the Local Government Code. In this instance, the request was received by the city, which has access to the files maintained under sections both subsections 143.089(a) and 143.089(g); therefore, the request encompasses both of these files. You state you have released the civil service file maintained under section 143.089(a). However, you do not indicate whether you have released the submitted information pertaining to the investigation resulting in disciplinary action or the submitted periodic performance reviews that must be included in the civil service file.

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143.

See 109 S.W.3d at 122. All information contained in the civil service file is subject to release unless it is shown that some provision of the Act permits the information to be withheld from public disclosure. *See* Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; ORD 562 at 6. Accordingly, except where we have marked for release, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. We will, however, consider your remaining arguments for the submitted information that must be maintained in the city's civil service file, which we have marked, pursuant to section 143.089(a).

You contend that portions of the submitted information subject to section 143.089(a) are excepted from disclosure under section 552.102 of the Government Code. Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101 of the Government Code. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (addressing statutory predecessor). Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has stated, in numerous decisions, that information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). Accordingly, as the information at issue deals with the work conduct of a public employee, we find that this information is of legitimate concern to the public. Accordingly, none of the information at issue may be withheld under section 552.102 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, personal cellular telephone numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state, and provide documentation showing, that the employee at issue elected to keep his information confidential. Therefore, the city must withhold the information we have marked pursuant to section 552.117(a)(1).

In summary, except where we have marked for release, the city must withhold the submitted information under section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code. The city must also withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. The remaining submitted information must be released.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/jb

Ref: ID# 345589

Enc. Submitted documents

c: Requestor
(w/o enclosures)