



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 27, 2009

Mr. Robert E. Hager  
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Dallas, Texas 75201

OR2009-10365

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 350380.

The City of Lancaster (the "city"), which you represent, received a request for internal affairs investigation numbers 09-002 and 09-003. The city asserts the information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information another statute makes confidential. Section 143.089 of the Local Government Code provides for the existence of two different types of personnel files relating to a police officer: 1) one maintained as part of the officer's civil service file and 2) one the police department maintains for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The city informs us it is a civil service city under chapter 143 of the Local Government Code.

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-.055. 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). *See Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, pet. denied). 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).

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.

Local Gov't Code § 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 those records confidential. *See City of San Antonio*, 851 S.W.2d at 949 (concluding "the legislature intended to deem confidential the information maintained by the . . . police department for its own use under subsection (g)"). The court stated the provisions of section 143.089 governing the content of the civil service file reflect "a legislative policy against disclosure of unsubstantiated claims of misconduct made against police officers and fire fighters, except with an individual's written consent." *Id.*; *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 section 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 section 143.089(a) and (g) files).

The city explains the police department maintains internal affairs investigation number 09-003 as a confidential internal file. Based on this representation and our review, we agree this information is confidential pursuant to section 143.089(g) of the Local Government Code. The city must withhold internal affairs investigation number 09-003 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.<sup>1</sup>

Next, the city argues it may withhold internal affairs investigation number 09-002 under sections 552.103 and 552.108 of the Act. We note, however, internal affairs investigation number 09-002 relates to misconduct that resulted in disciplinary action against the requestor. As stated above, an officer's civil service file must contain documents relating to any misconduct in those cases where the police department took disciplinary action against the officer. *See* Local Gov't Code § 143.089(a)(2); *see also id.* §§ 143.051-143.055 (describing "disciplinary action" for purposes of section 143.089(a)(2)); Attorney General Opinion JC-0257 (2000). Thus, internal affairs investigation number 09-002 must be maintained in the officer's civil service file pursuant to section 143.089(a)(2). Section 143.089(e) grants a right of access to a police officer for "any letter, memorandum, or document placed in the person's personnel file." 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 her personnel file maintained under section 143.089(a). *See* Open Records Decision No. 650 at 2 n.2 (1996). Because the requestor is the officer at issue, she has a statutory right of access to her section 143.089(a) file. Therefore, the city may not withhold the requestor's section 143.089(a) file under sections 552.103 and 552.108 of the Government Code. *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).

We next note the requestor's section 143.089(a) file contains polygraph information. Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which 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 . . . .

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<sup>1</sup>Because section 143.089(g) of the Local Government Code is dispositive, we do not address the city's other claims for internal affairs investigation number 09-003.

(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 confidential. 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 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). In applying the Code Construction Act, we note 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>2</sup> Thus, we find 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 the city must withhold it under section 1703.306(a).

In summary, the city must withhold internal affairs investigation number 09-003 under section 143.089(g) of the Local Government Code and the polygraph examination information we marked under section 1703.306 of the Occupations Code. The city must release the remaining information contained in the requestor's section 143.089(a) file to her pursuant to section 143.089(e) of the Local Government Code.<sup>3</sup>

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](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>2</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).

<sup>3</sup>Because the requestor's section 143.089(a) file contains information that may be confidential with respect to the general public, if the city receives another request for this information from an individual other than this requestor, the city should again seek our decision.

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHK/sdk

Ref: ID# 350380

Enc. Marked documents

c: Requestor  
(w/o enclosures)