



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 31, 2009

Ms. Leann M. Quinn, TRMC
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2009-18475

Dear Ms. Quinn:

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# 366129 (Cedar Park Ref. # 10-013).

The Cedar Park Police Department (the "department") received a request for a specified police report, including any audio and video recordings. You claim that the submitted 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.

Initially, we note that you have not submitted a written police report. To the extent the department maintained such a report on the date the department received the request, we assume it has already released this information. If the department has not released any such information, it must do so at this time. *See* Gov't Code § 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply, it must release information as soon as possible).

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. Section 552.101 encompasses section 143.089 of the Local Government Code. You state that the City of Cedar Park is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police officer's civil service file that the civil service director is required to maintain

and an internal file that the police department may maintain for its own 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 which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). In cases in which a police department investigates alleged misconduct by a police officer and takes disciplinary action against the police officer, it is required by section 143.089(a)(2) of the Local Government Code 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 pursuant to section 143.089(a). *See 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 file for the disciplined police officer. *See id.* Chapter 143 of the Local Government Code prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. Such records are subject to release under the Act. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to alleged misconduct by a police officer may not be placed in that officer's 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 the police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *see also City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted information relates to an administrative investigation into an allegation of misconduct by a department officer. You further state that this investigation is ongoing and has not resulted in disciplinary action, as defined in chapter 143, against the involved officer. We note, however, that the present request seeks information related to a specified incident, and does not specifically seek information from the officer's personnel file. Because the requestor generally asks for information about the specified incident, both the officer's internal file and any copies of investigatory materials that the department maintains separate and apart from the internal file for law enforcement purposes are responsive. The department may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Accordingly, because the submitted information exists separate and apart from the officer's confidential internal file and is maintained by the department for law enforcement purposes, the

department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

You also claim that the submitted information is excepted from disclosure under section 552.108(a)(1) of the Government Code. 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] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You have provided a statement from a department sergeant stating that the submitted information relates to an ongoing administrative investigation into alleged misconduct by a department officer. You have not stated that this information pertains to an ongoing criminal investigation or prosecution. We, therefore, find you have not adequately explained how the release of this information would interfere in some way with the detection, investigation, or prosecution of crime. Because you have failed to demonstrate the applicability of section 552.108, the department may not withhold the submitted information under section 552.108.

We note that one of the submitted audio recordings contains a license plate number for a vehicle that does not belong to the requestor or his client. Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]”¹ Gov’t Code § 552.130(a)(1), (2). Accordingly, if this is a Texas license plate number, then the department must withhold this information under section 552.130. Conversely, if this is not a Texas license plate number, then the department may not withhold this information under section 552.130.² As you raise

¹The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

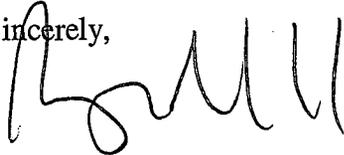
²We note that the information to be released also contains the requestor’s client’s Texas motor vehicle information. The requestor has a special right of access to this information, which is normally confidential under section 552.130. *See* Gov’t Code § 552.023 (person or person’s authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests). However, because such information may be confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

no further exceptions against disclosure, the department must release the remainder of the submitted information.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Mitchell", written over the word "Sincerely,".

Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/sdk

Ref: ID# 366129

Enc. Submitted documents

c: Requestor
(w/o enclosures)