



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2010

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2010-02210

Dear Mr. Phillips:

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# 370194 (FW PIR No. 0808-10).

The City of Fort Worth (the "city") received four requests from the same requestor for specified types of personnel records pertaining to four named city police officers. You state the city has provided some of the requested information to the requestor. You claim the submitted personnel records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 other statutes make confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code for the personnel records submitted as Exhibit C. You state the city is a civil service city under chapter 143 of the Local Government Code. 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 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 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, 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). However, information 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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the submitted personnel records in Exhibit C pertain to allegations of misconduct regarding the named officers that did not result in disciplinary action. You further state these records are maintained in the city police department's internal files as authorized under section 143.089(g) of the Local Government Code. Based on these representations and our review of the information at issue, we agree the personnel records in Exhibit C are confidential pursuant to section 143.089(g). Accordingly, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Because you do not assert Exhibits D and E are stored in the officers' personnel files maintained under section 143.089(g) of the Local Government Code, we presume these records are stored in the officer's civil service files maintained under section 143.089(a) of the Local Government Code. Accordingly, we will address your arguments against disclosure for Exhibits D and E.

You claim the CRB-3 and ST-3 peace officers' crash reports submitted as Exhibit D are excepted from disclosure under section 552.101 in conjunction with section 550.065(b) of the Transportation Code. Section 552.101 also encompasses section 550.065(b), which states, except as provided by subsection (c) or (e), accident reports are privileged and for the confidential use of certain specified entities. Transp. Code § 550.065(b). You state the crash reports in Exhibit D were completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a

person who provides two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the city with at least two of the three items of information specified by section 550.065(c)(4) for any of the reports in Exhibit D. Therefore, the city must withhold the submitted CRB-3 and ST-3 crash reports in Exhibit D pursuant to section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* You claim the information submitted as Exhibit E is CHRI excepted under chapter 411 of the Government Code. Upon review, however, none of the information in Exhibit E was generated by the NCIC or TCIC. Accordingly, we find you have not demonstrated how any portion of Exhibit E constitutes CHRI for purposes of chapter 411, and no portion of this information may be withheld on this basis.

We note portions of Exhibit E may be protected by common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To establish the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We have marked the compiled criminal history information of a private citizen in Exhibit E, and find the information is of no legitimate public concern. This information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you have claimed no other exceptions to disclosure, the remaining information in Exhibit E must be released.

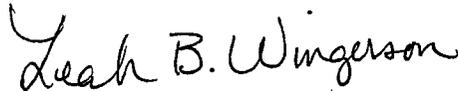
In summary, the city must withhold under section 552.101 of the Government Code the personnel records in Exhibit C in conjunction with section 143.089(g) of the Local Government Code; the CR-3 crash reports in Exhibit D in conjunction with section 550.065(b) of the Transportation Code; and the criminal history information we have

marked in Exhibit E in conjunction with common-law privacy. The remaining information must be released.¹

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 370194

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹The remaining information includes a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.