



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2010

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

OR2010-02874

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# 371998 (Fort Worth PIR # 1195-10).

The City of Fort Worth (the "city") received a request for any information pertaining to investigations or allegations of wrongdoing or any disciplinary actions taken against a named peace officer. You state you are releasing a portion of the information to the requestor. You state you have redacted certain Texas motor vehicle record information relating to individuals other than the requestor under section 552.130 of the Government Code pursuant to previous determinations issued to the city.¹ You also state you have redacted social security numbers under section 552.147 of the Government Code.² You claim that the submitted representative sample of information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³

¹See Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007); *see also* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

²Section 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.

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. 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; *see* Attorney General Opinion JC-0257 (written reprimand is not disciplinary action for purposes of Local Gov't Code chapter 143). 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 information in Exhibit C is taken from the internal police department personnel file for the named officer and that any investigation contained therein determined the allegations to be unfounded or the allegations did not result in discipline under Chapter 143 of the Local Code. Thus, you assert that the records are confidential under section 143.089(g) of the Local Government Code. Based on your representations and our review, we agree that the information in Exhibit C is confidential under section 143.089(g) of the Local Government Code and, therefore, must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.101 also encompasses section 550.065 of the Transportation Code. You assert that Exhibit D constitutes an ST-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states except as provided by subsection (c), accident reports are

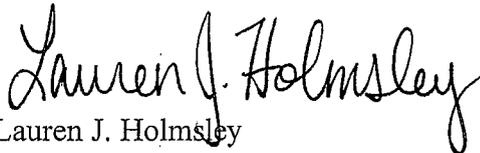
privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with 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). Therefore, the city must withhold the submitted ST-3 accident report form under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

In summary, the city must withhold the information in Exhibit C pursuant to section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. The city must also withhold the submitted ST-3 accident report form in Exhibit D under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

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,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 371998

Enc. Submitted documents

c: Requestor
(w/o enclosures)