



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2010

Ms. Paige H. Saenz
Assistant City Attorney
Knight and Partners
Executive Office Terrace
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2010-08353

Dear Ms. Saenz:

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#380463.

The City of Kyle (the "city"), which you represent, received a request for information pertaining to an incident that resulted in the suspension of a named police officer, and letters of reprimand or suspension for any other Kyle police officers during the past ten years. You claim that the request is a discovery request, and thus is not a request for information under the Act. Alternatively, you claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

We begin by addressing your claim that the present request was characterized as a discovery request, and thus is not a request for information under the Act. Section 552.0055 of the Government Code provides that "[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under this chapter." Gov't Code § 552.0055. This section does not apply in all instances in which a governmental body could have received such a subpoena or discovery request. *See Fitzgerald v. Advanced Spine Fixation Sys.*,

¹We 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.

Inc., 996 S.W.2d 864, 865-66 (Tex. 1999) (in interpreting statutes, goal of discerning legislature's intent is served by beginning with statute's plain language because it is assumed that legislature tried to say what it meant and its words are therefore surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994)) (“In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.”).

You acknowledge the present request was not issued in compliance with a rule under the Texas Rules of Civil Procedure or the Texas Code of Criminal Procedure. Instead, you state the city's civil service commission has adopted local rules pursuant to section 143.008 of the Local Government Code, which state the “commission shall adopt rules necessary for the proper conduct of commission business.” Local Gov't Code § 143.008. You further state that with respect to prehearing discovery, section 143.053(7) provides for limited discovery, and allows an officer to obtain records held in his civil service file maintained under section 143.089(a). You contend that to the extent “discovery” is authorized to be released under section 143.053(7), the present request was sufficient for the requestor to obtain a copy of her client's civil service file. Upon review, we conclude the present request does not constitute a request for discovery for the purpose of section 552.0055. Therefore, we find the city received a request for information under the Act, and we will address whether the city is required to release the requested information pursuant to chapter 552 of the Government Code.

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 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 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. Local Gov't Code § 143.089(a), (g). 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).² *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

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055.

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 the Act.³ 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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us the information in Exhibit A consists of the city police department's internal investigations of complaints that did not result in disciplinary action against the named officer. You state this information is maintained in the police department's internal file concerning the named officer. Based on your representations and our review of the documents at issue, we agree the information in Exhibit A is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

Exhibit B contains records pertaining to three different officers, which you state are maintained only by the police department. You state that these records were compiled and placed in the officers' departmental personnel files prior to the city's adoption of chapter 143, and you ask whether section 143.089(g) applies to these documents. Section 143.005 states, in pertinent part:

(a) Each fire fighter or police officer serving in a municipality that adopts this chapter and who has been in the service of the municipality for more than six months at the time this chapter is adopted and who is entitled to civil service classification has the status of a civil service employee and is not required to take a competitive examination to remain in the position the person occupies at the time of the adoption.

Local Gov't Code § 143.005(a). Therefore, officers who have been employed for more than six months when the city adopts chapter 143 are civil service employees and enjoy the full protections of the chapter. We note that section 143.089 only applies to police officers as defined by chapter 143. Chapter 143 defines "police officer" as a member of a police department or other peace officer who was appointed in substantial compliance with chapter 143 or who is entitled to civil service status under section 143.005, section 143.084, or section 143.103. Local Gov't Code § 143.003(5); see also *id.* §§ 143.005, .084 (pertaining to civil service status for certain temporary employees), .103 (pertaining to peace officers employed in specialized police divisions). In *Jackson v. City of Houston*, 595 S.W.2d 907 (Tex.Civ. App.—Houston [14th Dist.] 1980, writ ref'd n.r.e), the court ruled that the civil

³You state you have released the named officer's civil service file to the requestor.

service statute by its terms applies only to members of a police department who fit the qualifications of having been appointed by the process designated under chapter 143. *Id.* at 908.

One of the officers whose information is at issue was terminated in 2003. Accordingly, he was not appointed to the city's police department in substantial compliance with chapter 143. Furthermore, he was not entitled to civil service status under section 143.005, section 143.084, or section 143.103. Therefore he does not meet the definition of a "police officer" for purposes of this chapter. Accordingly, we find that section 143.089(g) does not apply to the terminated officer's personnel records. We are unable to determine whether the remaining two officers were still employed by the city after the adoption of chapter 143. Accordingly, we must rule conditionally. To the extent these officers were still employed by the city after the adoption of chapter 143, section 143.089(g) applies to the personnel files that the police department maintained for its own use. To the extent these officers were not still employed by the city after the adoption of chapter 143, section 143.089 does not apply to their information.

In addition, in *Wilson v. Andrews*, the supreme court held that although chapter 143 did not provide a police officer with the option to appeal his suspension to a neutral third-party hearing examiner when the city adopted chapter 143, the city was bound by the post-adoption amendment to the chapter providing for such an option. 10 S.W.3d 663, 668 (Tex. 1999). In the instant case, the documents at issue were compiled prior to the city's adoption of chapter 143. However, after the city's adoption of the chapter, as in *Wilson*, chapter 143 applies and makes the documents at issue confidential under section 143.089(g) and the city must withhold them.

In summary: 1) the city must withhold the information in Exhibit A pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; 2) to the extent the two officers whose civil service status is unclear were still employed by the city after the adoption of chapter 143, the city must withhold the records of these officers in Exhibit B pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; 3) to the extent the two officers were no longer still employed by the city after the adoption of chapter 143, their information, along with the information pertaining to the terminated officer, must be released.⁴

⁴We note this information contains an individual's 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. Gov't Code § 552.147(b).

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#380463

Enc. Submitted documents

c: Requestor
(w/o enclosures)