



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2010

Mr. Jefferson Bray
Senior Legal Advisor
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2010-09352

Dear Mr. Bray:

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# 384236.

The City of Plano (the "city") received a request for information pertaining to all vehicles owned and operated by the city that were captured on photograph or video running a red light at any red light camera in the city during a specified time period. You claim that the submitted 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.¹

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

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.

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 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).² 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.* Such records are subject to release under the Act. See Local Gov't Code § 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 a portion of the submitted information is maintained in the city police department's internal file pursuant to section 143.089(g) of the Local Government Code. You further state this information pertains to an allegation of misconduct that did not result in disciplinary action for purposes of chapter 143. Based on your representations and our review, we agree the information we have marked is confidential pursuant to section 143.089(g). Accordingly, the city must withhold the marked information under section 552.101 of the Government Code.

Section 552.101 encompasses section 730.004 of the Transportation Code, which provides that “[n]otwithstanding any other provision of law to the contrary, including chapter 552, Government Code, except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004; see also *id.* § 730.003(4) (defining “motor

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov't Code §§ 143.051-.055.

vehicle record” to include a record that pertains to a motor vehicle operator’s or driver’s license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state). Section 552.101 also encompasses section 730.013, which provides that for purposes of chapter 730 of the Transportation Code:

(a) An authorized recipient of personal information may not resell or redisclose the personal information in the identical or a substantially identical format the personal information was disclosed to the recipient by the applicable agency.

(b) An authorized recipient of personal information may resell or redisclose the information only for a use permitted under Section 730.007.

(c) Any authorized recipient who resells or rediscloses personal information obtained from an agency shall be required by that agency to:

(1) maintain for a period of not less than five years records as to any person or entity receiving that information and the permitted use for which it was obtained; and

(2) provide copies of those records to the agency on request.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$25,000.

Id. § 730.013. You state the city contracts with a third party, Redflex Traffic Solutions (“Redflex”), to provide support for its red light camera enforcement program. We understand the city obtains license plate numbers, which are captured by red light cameras, of vehicles that proceed through intersections against the light. You indicate that Redflex then uses the license plate numbers to obtain additional motor vehicle record information from the Texas Department of Transportation (“TxDOT”). We note TxDOT is an agency under section 730.003(1) that obtains or compiles motor vehicle records. We further note “personal information” means information that identifies a person, including an individual’s photograph or computerized image, social security number, driver identification number, name, address, but not the zip code, telephone number, and medical or disability information. *See id.* § 730.003(6). Accordingly, we find that, by obtaining motor vehicle information from TxDOT to assist the city in carrying out its functions, Redflex is an authorized recipient of personal information for purposes of section 730.013. *See id.* § 730.007(a)(2)(A)(ii) (authorized recipient includes a private entity acting on behalf of a government agency in carrying out the agency’s functions).

You claim the remaining information is confidential pursuant to section 730.013 of the Transportation Code. We note this information consists of a list of names, incident numbers, categories of vehicles, and dispositions of the incidents. The information at issue does not consist of personal information for the purposes of section 730.003(6). Thus, we find you have failed to demonstrate any of the remaining information is confidential under section 730.013(a), and it may not be withheld under section 552.101 on that basis.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The remaining information must be released.

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 384236

Enc. Submitted documents

c: Requestor
(w/o enclosures)