



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2010

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

OR2010-10063

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# 385831 (PIR No. W000452).

The City of Fort Worth (the "city") received a request for the requestor's personnel file. You state the city is releasing the requestor's civil service file. You also state the city has redacted social security numbers, other than the requestor's, under section 552.147 of the Government Code and Texas motor vehicle record information not belonging to the requestor under section 552.130 of the Government Code pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).¹ See Gov't Code § 552.301(a); Open Records Decision No. 673

¹We note that section 552.147(b) 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.

(2001) (previous determinations). 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 information.

Section 552.101 of the Government Code excepts "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 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, a document relating to a police officer's alleged misconduct may not be placed in his 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 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 information is maintained in the city's police department's internal files as authorized under section 143.089(g) of the Local Government Code.² Based upon this representation and our review of the submitted records, we agree that the submitted information is confidential under section 143.089(g) of the Local Government Code and conclude that it must be generally withheld under section 552.101 of the Government Code.³

However, we note that the submitted information contains polygraph information of the requestor and the requestor's fingerprints. The polygraph information is governed by section 1703.306 of the Occupations Code, while fingerprints are governed by chapter 560 of the Government Code. In this instance, the city seeks to withhold the polygraph information and fingerprints under section 143.089 of the Local Government Code. However, section 560.002 of the Government Code and section 1703.306 of the Occupations Code are more specific statutes than section 143.089 because chapter 560 of the Government Code applies specifically to biometric identifiers and section 1703.306 applies specifically to polygraph information, while section 143.089 applies generally to all records in a personnel file. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Therefore, the fingerprints and polygraph information are subject to section 560.003 of the Government Code and section 1703.306 of the Occupations Code, respectively, and may only be released in accordance with their release provisions. *See* ORD 598. Thus, we will address the applicability of section 560.003 of the Government Code and section 1703.306 of the Occupations Code to the submitted information that falls within the scope of these statutory provisions.

Section 560.001(1) of the Government Code provides that "[b]iometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." Gov't Code § 560.001(1). Under section 560.003 of the Government Code, "[a] biometric identifier in

²We note that although section 143.089(e) provides police officers a right of access to their own civil service file maintained under section 143.089(a), this office has determined that police officers do not have a right to their own internal file maintained by a police department pursuant to section 143.089(g). *See* Open Records Decision No. 650 at 3 (1996) (confidentiality provision of section 143.089(g) contains no exceptions).

³We note that the officer's personnel file contains investigations of misconduct that resulted in disciplinary action against the officer under chapter 143 of the Local Government Code. We also note that the submitted information includes commendations, which are subject to section 143.089(a)(1), and evaluations, which are subject to section 143.089(a)(3). Accordingly, the documents pertaining to the investigations of misconduct that resulted in disciplinary action, as well as the commendations and evaluations, must be maintained in the officer's civil service file under section 143.089(a). We assume that this information, as so held, either has been or will be released.

the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003. Section 560.002 states, however, that “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Thus, the requestor has a right of access to his own fingerprints under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, the city must release the requestor’s fingerprints to him pursuant to section 560.002.

Section 1703.306 of the Occupations Code provides in relevant part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306. In this instance, the requestor is the polygraph examinee. Thus, the city has the discretion to release the polygraph information of the requestor pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permits, but does not require, examination results to be disclosed to examinees). Otherwise, the city must withhold the marked polygraph information under section 552.101 in conjunction with section 1703.306(a).

In summary, the requestor’s fingerprints must be released in accordance with section 560.002 of the Local Government Code. The city has the discretion to release the polygraph information of the requestor pursuant to section 1703.306(a)(1) of the Occupations Code. Otherwise, the city must withhold the polygraph information under section 552.101 in conjunction with section 1703.306(a). The city must withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.⁴

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

⁴If the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 385831

Enc. Submitted documents

c: Requestor
(w/o enclosures)