



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2010

Ms. Julia Gannaway
Lynn, Pham & Ross, L.L.P.
For Grand Prairie Police Department
306 West Broadway Avenue
Fort Worth, Texas 76104

OR2010-12114

Dear Ms. Gannaway:

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# 389928.

The Grand Prairie Police Department (the "department"), which you represent, received a request for information pertaining to a named department officer, including that officer's complete personnel file, and information pertaining to discipline of other department officers over a specified time period. You state that the department is in the process of providing the requestor with some of the information. Additionally, you state you have redacted social security numbers in accordance with section 552.147 of the Government Code.¹ 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, a portion of which consists of a representative sample.²

¹Section 552.147(b) of the Government Code authorizes a government 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.

²We 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.” Gov’t Code § 552.101. This section encompasses section 143.089 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). The police officer’s civil service file must contain specific items, including commendations, periodic evaluations by the officer’s supervisor, and documents from the employing department relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code.³ *See id.* § 143.089(a)(1)-(2). In cases in which a police department investigates an 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). *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 personnel file. *Id.* Such records are subject to release under chapter 552 of the Government Code. *See* Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an 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 personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied).

You inform us that the City of Grand Prairie (the “city”) is a civil service city under chapter 143 of the Local Government Code. You state the information in Exhibit C is maintained in the officer’s departmental personnel file. Based on your representations and our review, we agree the department must withhold Exhibit C under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

³Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055. An oral or written reprimand does not constitute discipline under chapter 143.

You state Exhibit B contains a document involving "informal discipline" of a department officer and inform us this document is maintained by the city in the officer's civil service file under section 143.089(a). We note the document in Exhibit B is a written reprimand. Written reprimands are not disciplinary action for purposes of chapter 143. See Local Gov't Code §§ 143.051-.055; Attorney General Opinion JC-0257 (2000). Attorney General Opinion JC-0257 states that "a written reprimand may not be placed in the public, civil-service director's personnel file." Att'y Gen. Op. JC-0257 at 9. Thus, the written reprimand at issue must be in the officer's internal department file maintained under section 143.089(g). We note the request, in this instance, was received by the department, which maintains the officer's section 143.089(g) file. Therefore, because the information at issue was requested from the department in this instance, it is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code. We note section 143.089(a) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the city's civil service director or the director's designee. Accordingly, you must refer the requestor to the city's civil service director.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find the information we have marked in the remaining submitted information constitutes personal financial information. We also find that this information is not of legitimate public concern. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold Exhibits B and C under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The remaining information must be released.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 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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 389928

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As you acknowledge, the information being released contains the requestor's client's private information. See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987). As this information may be confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor or his client, then the department must again seek a ruling from this office.