



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2010

Ms. Teresa J. Brown
Senior Open Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2010-14208

Dear Ms. Brown:

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# 394166.

The Plano Police Department (the "department") received two requests from the same requestor for ten categories of information related to a specified incident report, all information related to the internal affairs investigation of a named officer involved in a specified incident, and any other internal affairs investigations of any other officers involved in the specified incident. You indicate that you have released some of the requested information. You claim that the remaining 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 of Plano

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.

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). 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 any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). 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 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. *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.³ *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted information is maintained in the department's internal personnel file pursuant to section 143.089(g). The submitted documentation reveals that this information pertains to an allegation of misconduct that did not result in disciplinary action for purposes of chapter 143. We note, however, that the submitted photographs are maintained separate and apart from the internal affairs investigation. The present request does not specifically seek information from the officers' police department personnel files. Instead, the requestor seeks information pertaining to a specified incident report and any related internal affairs investigations arising from that incident. Because the requestor asks for information about the specified incident report, both the officers' personnel files and any copies of investigatory materials that the department maintains for law enforcement purposes are responsive. The department may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Accordingly, we find the information we have marked is confidential under section 143.089(g) and must be

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

³We note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

withheld under section 552.101 of the Government Code on that basis. However, the photographs are not confidential under section 143.089(g) of the Local Government Code. Thus, the department may not withhold the photographs under section 552.101 of the Government Code on this basis.

We note that the photographs contain Texas license plate numbers. Section 552.130 excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state.⁴ See Gov't Code § 552.130(a)(2). The department must generally withhold the Texas license plate numbers under section 552.130 of the Government Code.⁵ However, one of the license plate numbers may belong to the requestor's client. Section 552.023(a) of the Government Code states that a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests. Gov't Code 552.023. Accordingly, pursuant to section 552.023 of the Government Code, the requestor has a special right of access to his client's license plate number. Therefore, if one of the license plate numbers belongs to the requestor's client, that license plate number must be released to the requestor.

In summary, the department 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 department must generally withhold the license plate numbers in the submitted photographs under section 552.130 of the Government Code. However, if one of the license plate numbers belongs to the requestor's client, that number must be released to the requestor. 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

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including the portion of a photograph that reveals a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in cursive script that reads "Kate Hartfield".

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 394166

Enc. Submitted documents

c: Requestor
(w/o enclosures)