



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2010

Ms. Valeria M. Acevedo
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR2010-14527

Dear Ms. Acevedo:

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# 394578.

The Laredo Police Department (the "department") received a request for all records pertaining to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have noted, is not responsive to the instant request for information because it does not pertain to the named individual. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

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. Section 552.101 encompasses information protected by section 143.089 of the Local Government Code. You state the City of Laredo (the "city") is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the maintenance of two different types of personnel files for each police officer employed by a civil service city: one that must be maintained as part of the officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). Under section 143.089(a), 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). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. 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). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See* Local Gov't Code § 143.089(b)-(c).

Section 143.089(g) authorizes a police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. *See id.* § 143.089(g). Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Local Gov't Code § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex.App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined section 143.089(g) made these records confidential. *See* 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting

confidentiality under Local Gov't Code § 143.089(g) to "information reasonably related to a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You assert the submitted internal affairs investigation is confidential under section 143.089(g) of the Local Government Code. You state this information relates to an internal affairs investigation that did not result in disciplinary action against the department officer. However, the submitted information includes an incident report, a witness statement, 9-1-1 and dispatch audio recordings, and dash cam video recordings that are also maintained independently from the department officer's personnel file. The present request does not specifically seek information from the officer's department personnel files. Instead, the requestor seeks information pertaining to a named individual who was involved in an incident with department officers. Because the requestor generally asks for information about the named individual, both the officer's personnel file and any copies of investigatory materials 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 that is maintained solely in the department's internal investigative file is confidential under section 143.089(g) and must be withheld under section 552.101 of the Government Code. However, the submitted information that is also maintained independently of the department's internal investigative file is not confidential under section 143.089(g) and may not be withheld under section 552.101 of the Government Code on that basis. We will therefore consider your additional arguments against disclosure with respect to the responsive information maintained independent of the internal file.

We note the remaining responsive information at issue is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The remaining responsive information consists of information related to a completed investigation that is subject to section 552.022(a)(1). The department must release this information, which we have marked and noted, pursuant to section 552.022 unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under other law. *See id.* You claim this information is subject to sections 552.101 and 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not "other law" that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex.

App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Consequently, the department may not withhold any of the information subject to section 552.022(a)(1) under section 552.103 of the Government Code. However, you claim some of the information subject to section 552.022 is protected from disclosure under section 552.101 in conjunction with the common-law informer's privilege. The common-law informer's privilege is other law for the purpose of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *Tex. Comm'n on Envtl. Quality v. Abbott*, No. GV-300417 (126th Dist. Ct., Travis County, Tex.). Further, portions of the information at issue are subject to section 552.130 of the Government Code. Section 552.130 is also other law for purposes of section 552.022(a)(1). Therefore, we will consider the applicability of this section and section 552.101 in conjunction with the common-law informer's privilege to the information at issue.¹

Section 552.101 of the Government Code also encompasses information protected by the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See Open Records Decision No. 208* at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279* at 1-2 (1981). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582* at 2 (1990), *515* at 4 (1988).

You argue the remaining information includes the identity of a person who has provided the department with information regarding an alleged violation of the law. You indicate the complainant in the information at issue reported an alleged theft, a violation of the Texas Penal Code that carries criminal penalties, to the department. Based upon your representations and our review, we conclude the department has demonstrated the applicability of the common-law informer's privilege to portions of the remaining information. Therefore, the department may withhold the identifying information of the complainant within the submitted report, witness statement, and the audio and video recordings, which we have indicated, pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481* (1987), *480* (1987), *470* (1987).

agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note section 552.130 does not apply to out-of-state motor vehicle record information. Upon review, we find portions of the video recordings contain Texas motor vehicle record information. Accordingly, the department must withhold the discernible Texas license plate numbers within the video recordings at issue under section 552.130 of the Government Code.

In summary, the information that is maintained solely in the department's internal investigative file is confidential under section 143.089(g) and must be withheld under section 552.101 of the Government Code. The department may withhold the identifying information of the complainant within the submitted report, witness statement, and the audio and video recordings, which we have indicated, pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The department must withhold the discernible Texas license plate numbers within the video recordings at issue under section 552.130 of the 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

Ref: ID# 394578

Enc. Submitted documents

c: Requestor
(w/o enclosures)