



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 6, 2010

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2010-15251

Dear Ms. Valkavich:

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# 395983 (COSA File No. 10-1153).

The City of San Antonio (the "city") received a request for information pertaining to a named officer with the San Antonio Police Department (the "department").¹ You state the city will release most of the requested information. You further state you will redact certain information pursuant to the previous determination issued by this office in Open Records Decision No. 670 (2001).² You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹We note the city requested and received clarification from the requestor regarding her request. *See* Gov't Code § 552.222(b) (providing that if request is unclear or a large amount of information has been requested, governmental body may clarify request or discuss with requestor how request may be narrowed).

²*See* Open Records Decision No. 670 at 6 (authorizing all governmental bodies that are subject to the Act to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information, of peace officers without the necessity of requesting attorney general decision under section 552.117(a)(2)); *see also* Gov't Code § 552.301(a); Open Records Decision Nos. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301).

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 made confidential by other statutes, such as section 143.089 of the Local Government Code. We understand the city 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 city’s civil service director is required to maintain, and an internal file that the 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 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).³ *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 may not be withheld on the basis of section 143.089. *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. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state a portion of the submitted documents are kept in the department’s personnel file maintained under section 143.089(g). Upon review of this information, we find it pertains to the requestor’s employment with the department. Therefore, we agree this information, which we have marked, is confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

You also claim section 143.089(g) for portions of audio and video recordings from an investigation file in which disciplinary action was taken against the named officer. Although you inform us these recordings are part of an investigation that is maintained by the city in the officer’s civil service file, you claim that because the recordings contain “several references . . . to other related investigations which are still pending[,]” such references should be withheld under section 143.089(g). We note section 143.089(g) does not make

³Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055.

confidential any records that exist independently of an officer's internal file maintained by the department. Accordingly, we find you have failed to demonstrate the applicability of section 143.089(g) to the recordings at issue, and the city may not withhold them under section 552.101 of the Government Code.

Next, you raise section 552.101 in conjunction with former section 51.14 of the Family Code for a portion of the remaining information. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Specifically, law enforcement records pertaining to conduct occurring before January 1, 1996, are governed by former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Former section 51.14 provided in relevant part as follows:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Id. § 51.14(d) (repealed 1995). We have marked two police reports that pertain to juvenile delinquent conduct that occurred prior to January 1, 1996. Therefore, these reports are confidential under former section 51.14(d) of the Family Code and must be withheld in their entirety pursuant to section 552.101 of the Government Code. We find, however, the remaining information you seek to withhold under former section 51.14 consists of records of an internal administrative investigation. These administrative records do not constitute juvenile law enforcement records for the purposes of former section 51.14(d). Therefore, we conclude the city may not withhold any of the remaining information that you seek to withhold on the basis of section 51.14.

You claim portions of the remaining information are subject section 552.122 of the Government Code, which excepts from required public disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined the term "test item" in section 552.122 includes "any standard

means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You have marked the information you seek to withhold under section 552.122. You state the release of this information would compromise the use of questions in future examinations. We find the test information we have marked, as well as the portions of one of the submitted audio recordings we have indicated, consist of multiple choice questions and possible answers for a department promotional test that qualify as test items under section 552.122(b) of the Government Code. Accordingly, the city may withhold the information we have marked and indicated under section 552.122(b). However, we find the remaining information you have marked, which includes Scantron answer sheets and peace officer information, does not contain examination questions, nor does it provide any indication of the nature or content of the examination questions. Therefore, we find this information is not protected under section 552.122 and may not be withheld on that basis. As you raise no further exceptions to the disclosure of this information, it must be released.

Finally, section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1)-(2). We find the city must withhold the Texas driver's license and license plate numbers you have highlighted in the remaining information, as well as the additional driver's license number we have marked, under section 552.130 of the Government Code.⁴

In summary, the city must withhold the submitted documents we have marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must withhold the two police reports we have marked under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code. The city may withhold the test questions we have marked and indicated on one of the submitted audio recordings under section 552.122 of the Government Code. The city

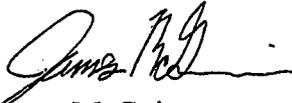
⁴We note in Open Records Decision No. 684 (2009), this office issued a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

must withhold the marked Texas driver's license and license plate numbers under section 552.130 of the Government Code. The remaining information must be released.⁵

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# 395983

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the information being released contains social security numbers. Section 552.147(b) of the Government Code 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. *See* Gov't Code § 552.147(b).