



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2010

Mr. David V. Sorola
City Attorney
City of Del Rio
109 West Broadway Street
Del Rio, Texas 78840

OR2010-16539

Dear Mr. Sorola:

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# 400494.

The City of Del Rio (the "city") received a request for documents pertaining to internal affairs investigations involving specified officers. You claim 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.

You acknowledge exhibits K and L are not responsive to the request. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

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 information that other statutes make confidential, 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 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). 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 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 (2000) (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 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).

We find the information at issue reflects the investigations resulted in disciplinary action against the officers. Because the information at issue relates to misconduct that resulted in disciplinary action against the officers at issue, this information must be maintained in their civil service files pursuant to section 143.089(a)(2), and it may not be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

You ask about the effect of subsection 143.089(f) of the Local Government Code on the release of the information at issue. Subsection 143.089(f) provides "[t]he director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law." Local Gov't Code § 143.089(f). In Open Records Decision No. 562, this office addressed the phrase "unless the release of the information is required by law" in subsection (f) and concluded the Act is a law that requires release of information. Open Records Decision No. 562 at 5, 6 (1990). Thus, the decision further concluded subsection (f) does not prohibit disclosure of a personnel file in a situation governed by the Act. *Id.* at 6. Because you raise no applicable exception to the information at issue, the Act requires you release the information. As such, the police officers' written

permission is not required in order to release the information at issue because release of the information is required by law.

We note section 143.089(e) grants a right of access to a police officer for "any letter, memorandum, or document placed in the person's personnel file." Local Gov't Code § 143.089(e). This office has interpreted this provision to grant a police officer an affirmative right of access to the information in his or her personnel file maintained under section 143.089(a). *See* Open Records Decision No. 650 at 2 n.2 (1996). Accordingly, the city must release any information that is kept in the requestor's civil service file. You inform us exhibits E and I are kept in the requestor's personnel file maintained under section 143.089(a). Therefore, exhibits E and I must be released to the requestor.¹

You also ask about the effects of subsections 552.022(a)(1) and (18) of the Government Code on the release of the information at issue. We will address these sections with regard to the remaining information at issue. Section 552.022 states in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the 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;

...

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(1), (18). Initially, we note none of the remaining information at issue consists of a settlement agreement. Therefore, 552.022(a)(18) is inapplicable to any of the remaining information at issue. Next, while we agree exhibits B, C, D, F, G, and H consist of completed investigations under section 552.022(a)(1), these exhibits are expressly public only if they are not excepted by section 552.108 of the Government Code or made confidential by other law. *Id.* § 552.022(a)(1). Because section 552.101 of the Government Code constitutes "other law" for the purposes of section 552.022, we will consider its applicability for exhibits B, C, and D. Exhibit F contains info subject to section 552.117 of the Government Code, which is also other law for purposes of section 552.022, and we will consider its applicability for exhibit F. As you raise no exceptions for exhibits G and H, these documents must be released as a completed investigation under section 552.022(a)(1) of the Government Code.

¹We note because the requestor has a special right of access to this information in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

We note section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Id.* at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released under *Ellen*, but the identities of the victims and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. See Open Records Decision Nos. 393 (1983), 339 (1982). However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of witnesses and victims must still be redacted from the statements. We note supervisors are not witnesses for purposes of *Ellen*, and thus, supervisors' identities generally may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. In addition, since common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance, the identity of the individual accused of sexual harassment is not protected from public disclosure. See Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

We find exhibits B, C, and D do not contain an adequate summary of the investigation into alleged sexual harassment. Thus, these exhibits must generally be released, with the identities of the victims and witnesses redacted. See *Ellen*, 840 S.W.2d at 525. However, we note because the requestor is the alleged victim, she has a right of access to her own identifying information, and this information may not be withheld from her. See Gov't Code § 552.023 (person has special right of access to information excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); see also Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself). Thus, the city must withhold the identities of the witnesses we have marked in exhibit B under section 552.101 on the basis of common-law privacy and the holding in *Ellen*. As you

make no further arguments against disclosure of the remaining information in exhibits B, C, and D, this information must be released to the requestor.

We also note some of the information in exhibit F is subject to section 552.117(a)(2) of the Government Code.² Section 552.117(a)(2) excepts from disclosure the home address and telephone number, social security number, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure. *See* Gov't Code §552.117(a)(2). The city must withhold the information we have marked in exhibit F under section 552.117(a)(2).

In summary, none of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. The city must release exhibits E and I to the requestor because the requestor has a statutory right of access to these documents under section 143.089(e) of the Local Government Code. The city must withhold the identities of the witnesses we have marked in exhibit B under section 552.101 in conjunction with common-law privacy. The city must withhold the information we have marked in exhibit F under section 552.117(a)(2) of the Government Code. The remaining information at issue must be released to the requestor.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

²The 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).

Ref: ID# 400494

Enc. Submitted documents

c: Requestor
(w/o enclosures)