



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2010

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2010-16813

Dear Mr. Mann:

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# 399202 (GCA 10-0667).

The Garland Police Department (the "department") received a request for 12 categories of information relating to a specified incident and a named police officer. You inform us Texas driver's license and license plate numbers have been redacted from the responsive records pursuant to the previous determination issued under section 552.130 of the Government Code in Open Records Decision No. 684 (2009).¹ We note the department also has redacted social security numbers pursuant to section 552.147 of the Government Code.² You also state some of the requested information has been released. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108,

¹We note that this office recently issued Open Records Decision No. 684, a previous determination authorizing all governmental bodies to withhold ten categories of information, including a Texas driver's license number and a Texas license plate number under section 552.130, without the necessity of requesting an attorney general decision.

²Section 552.147(b) 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.

and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the representative samples of information you submitted.³

We first note that although the requestor seeks access to the department's vehicle pursuit and accident reporting policies and vehicle service records relating to the named police officer's patrol car, the submitted representative samples of information do not include such policies or vehicle service records. Therefore, to the extent any such policies or service records existed when the department received this request, we assume they have been released. If not, then any such policies or records that existed when the department received this request must be released immediately.⁴ See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

We also note the submitted information includes a crash report governed by section 550.065 of the Transportation Code. Although the department seeks to withhold the crash report under section 143.089 of the Local Government Code, section 550.065 of the Transportation Code is a more specific statute than section 143.089 of the Local Government Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. See Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Therefore, we will address the applicability of section 550.065 of the Transportation Code to the submitted crash report.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. See Transp. Code § 550.065(b); see also *id.* § 550.064 (officer's accident report). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. See *id.* § 550.065(c)(4). Under this provision, the Texas Department of

³This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

⁴We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the department with two of the three specified items of information. Therefore, the department must release the crash report contained in the submitted personnel records under section 550.065(c)(4) of the Transportation Code.

Section 552.101 of the Government Code also encompasses section 143.089 of the Local Government Code.⁵ Section 143.089 provides for the existence of two different types of personnel files relating to a police officer, including 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). 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).

Subsection (g) of section 143.089 authorizes the police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. Section 143.089(g) provides as follows:

⁵You inform us that the City of Garland is a civil service municipality under chapter 143 of the Local Government Code.

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.

Id. § 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 that 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, no pet.) (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 seek to withhold representative samples of the named police officer's personnel file and internal affairs investigation records involving the officer under section 143.089(g). You state the officer's personnel file is maintained by the department for its internal use and internal affairs investigation records are maintained as part of the officer's departmental personnel file. You inform us no disciplinary action has been taken against the officer under chapter 143 of the Local Government Code. Based on your representations and our review of the information at issue, we conclude the department must withhold the rest of the submitted personnel and internal affairs records under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.⁶

You also claim section 552.101 of the Government Code in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101.

⁶As we are able to make this determination, we need not address your other claims for some of this information.

See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

You contend the information you have marked in blue is protected by common-law privacy. Having reviewed the information at issue, we find some of the marked information either is not highly intimate or embarrassing or is a matter of legitimate public interest. Therefore, that information, which we have marked, may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy and must be released. We find the remaining information you have marked, as well as the additional information we have marked, is highly intimate or embarrassing and not a matter of legitimate public interest. We therefore conclude the department must withhold the remaining information you have marked, along with the information we have marked, under section 552.101 in conjunction with common-law privacy.

You also claim section 552.108 of the Government Code, which excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You seek to withhold the portions of the remaining documents you have marked in red, as well as the submitted photographs and audio/video recordings, under section 552.108(a)(1). You state release of the information in question would interfere with a pending criminal case investigation. Based on your representations, we conclude the department may withhold the information you have marked in red, the photographs, and the audio/video recordings under section 552.108(a)(1) of the Government Code.⁷ *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Lastly, section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130(a)(2). We agree the department must withhold the remaining Texas motor vehicle information you have marked in green, along with the additional Texas motor vehicle information we have marked, under section 552.130.

In summary: (1) the submitted crash report must be released pursuant to section 550.065(c)(4) of the Transportation Code; (2) the rest of the submitted personnel and internal affairs records must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; (3) except for the

⁷As we are able to make this determination, we need not address your other claim for some of the marked information.

information we have marked for release, the information you have marked in blue and the additional information we have marked must be withheld under section 552.101 in conjunction with common-law privacy; (4) the information you have marked in red, the photographs, and the audio/video recordings may be withheld under section 552.108(a)(1) of the Government Code; and (5) the remaining Texas motor vehicle information you have marked in green and the additional Texas motor vehicle information we have marked must be withheld under section 552.130 of the Government Code.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 399202

Enc: Submitted information

c: Requestor
(w/o enclosures)