



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 22, 2010

Mr. Peter Scott  
Assistant City Attorney  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2010-19259

Dear Mr. Scott:

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# 404208 (City ID# 346).

The Wichita Falls Police Department (the "department") received a request for dates of service, reprimands and/or disciplinary actions, records relating to termination and/or resignation and records relating to hiring and/or rehiring of a named officer. You state you have released some information to the requestor. 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.

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 protected by other statutes. You state the City of Wichita Falls (the "city") is a civil service city under chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code contemplates two different types of personnel files, a police officer's civil service file the civil service director is required to maintain, and an internal file 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 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 (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 personnel 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 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. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

We note the information in Exhibit 2 consists of personnel documents regarding the named officer, some of which has been stamped as received by the city's human resources department. You assert the information in Exhibit 2 "may be part of [the department's] internal file" for the named officer. Because the requestor generally seeks information related to the officer's dates of service, hiring/rehiring, and termination/retirement, both the section 143.089(g) files and copies of administrative records maintained separately from the section 143.089(g) files are responsive. The city may not engraft the confidentiality afforded to records under section 143.089(g) to other records that exist independently of an officer's departmental file. Therefore, to the extent the information in Exhibit 2 is maintained solely in the officer's departmental file, it is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code. However, to the extent the information in Exhibit 2 is maintained outside the officer's departmental file, it is not confidential under section 143.089 of the Local Government Code, and the city may not withhold it under section 552.101 of the Government Code on that basis.

We further note a portion of the information in Exhibit 2, which we have marked, relates to a finding of misconduct pertaining to the officer that resulted in a disciplinary suspension.

An officer's civil service file must contain documents relating to any misconduct in those cases where the police department took disciplinary action against the officer. *See* Local Gov't Code § 143.089(a)(2); *see also id.* §§ 143.051-.052 (suspension and uncompensated duty are "disciplinary action[s]" for purposes of section 143.089(a)(2)). Therefore, this type of information is subject to section 143.089(a) and must be placed in the officer's civil service file, unless the department has already done so.<sup>1</sup>

You state the remaining information is contained in the department's internal personnel file for the named officer and that this information is maintained under section 143.089(g). You further state any allegations of misconduct against the officer were determined to be unfounded or did not result in discipline under chapter 143. Accordingly, we agree the remaining information is confidential under section 143.089(g) of the Local Government Code and must be withheld from disclosure under section 552.101 of the Government Code.<sup>2</sup>

We note a portion of the information in Exhibit 2 is protected by common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find a portion of the information in Exhibit 2, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>1</sup>We also note section 143.089(g) requires a police department that 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.

<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In addition, we note the information in Exhibit 2 includes information excepted from disclosure under section 552.102(a) of the Government Code.<sup>3</sup> Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Having carefully reviewed the information at issue, we find the department must withhold the information we have marked under section 552.102(a) of the Government Code.

We further note a portion of the information in Exhibit 2 is subject to section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer.<sup>4</sup> See Gov't Code § 552.117(a)(2); Open Records Decision No. 622 (1994). Therefore, the department must withhold the information we have marked in Exhibit 2 under section 552.117(a)(2) of the Government Code.

In summary, with the exception of the marked information in Exhibit 2 relating to the officer's misconduct, which must be placed in the officer's civil service file under section 143.089(a) of the Local Government Code, to the extent the information is maintained solely in the officer's departmental file, the department must withhold it under section 552.101 of the Government Code in conjunction with section 143.089(g). To the extent the information is maintained outside the officer's departmental file, the department must release it. In doing so, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, under section 552.102 of the Government Code, and under section 552.117 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](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

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions.

<sup>4</sup>Peace officer is defined by article 2.12 of the Code of Criminal Procedure.

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 "Mack T. Harrison". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/vb

Ref: ID# 404208

Enc. Submitted documents

c: Requestor  
(w/o enclosures)