



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2010

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

OR2010-19322

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# 402663 (GCA 10-0729).

The City of Garland (the "city") received a request for a specified internal affairs investigation and independent hearing examiner's decision regarding a named police officer. You claim the submitted investigation and hearing examiner decision records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note an e-mail in the submitted information was created after the city received the request for information. Thus, this e-mail, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

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 exception encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code. You state 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). 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. 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, 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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You assert the submitted internal affairs investigation and independent hearing examiner decision records are maintained in the Garland Police Department’s (the “department”) internal files and must be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. You acknowledge the submitted records pertain to an internal investigation of the named officer in which disciplinary action was taken by the department. You explain the officer appealed the disciplinary action to an independent hearing examiner, who found some, but not all, of the charges were sustained. Based on the hearing examiner’s findings, you argue the records are confidential under section 143.089(g). Although the independent hearing examiner reduced the severity of the disciplinary action based on his finding that only some of the charges were sustained, disciplinary action was, nonetheless, imposed upon the named officer as a result of the department’s internal investigation. As previously stated, all information pertaining to

charges of misconduct that resulted in disciplinary action must be maintained in the officer's civil service file under section 143.089(a) of the Local Government Code. *See* 109 S.W.3d at 122. Therefore, the submitted records must be maintained in the officer's civil service file pursuant to section 143.089(a)(2) and may not be withheld under section 143.089(g). Information contained in the civil service file generally must be released, unless it is shown that some provision of the Act permits the information to be withheld from public disclosure. *See* Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; ORD 562 at 6.

We note portions of the submitted information may be subject to sections 552.101, 552.117, 552.130, and 552.137 of the Government Code.¹ Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Police incident report number 2009R004296, submitted as part of the internal investigation records, involves a fifteen-year-old runaway. Thus, we find this report involves juvenile conduct indicating a need for supervision. *See id.* § 51.03(b)(3) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). It does not appear any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find incident report

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

number 2009R004296 is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses section 21.12(a) of the Penal Code, which provides a public or private school employee commits an offense if the employee engages in "sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works[.]" Penal Code § 21.12(a)(1). Furthermore, section 21.12(d) provides "[t]he name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Subsection (a) may not be released to the public and is not public information under Chapter 552, Government Code." *Id.* § 21.12(d). Incident report number 2009R010204, submitted as part of the internal investigation records, involves an alleged improper relationship between a teacher and a student. Thus, the student's name, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with section 21.12(d) of the Penal Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.² Gov't Code § 552.117(a)(2). Section 552.117(a)(2) is also applicable to a peace officer's cellular telephone number, if the cellular telephone service is paid for by the officer with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117(a)(2) exception to personal cellular telephone number and personal pager number of peace officers).

We have marked the named officer's personal information, which includes the officer's cellular telephone number. You have not informed us whether the officer's marked cellular telephone number is paid for by the officer. Thus, to the extent the marked cellular telephone number is paid for by the named officer, the city must withhold this information, along with the other personal information we have marked, under section 552.117(a)(2) of the Government Code. To the extent the officer did not pay for the cellular telephone number, the cellular telephone number must be released, but the remaining personal information we have marked must be withheld under section 552.117(a)(2) of the Government Code.

The remaining information contains Texas driver's license numbers. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). Thus, the city must withhold the Texas driver's license numbers we have marked under section 552.130 of the Government Code.

²"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

The remaining information includes e-mail addresses subject to section 552.137 of the Government Code, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not specifically excluded by section 552.137(c). As such, these e-mail addresses, which we have marked, must be withheld under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release.

In summary, the city must withhold incident report number 2009R004296 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; the student's name we have marked in report number 2009R010204 under section 552.101 of the Government Code in conjunction with section 21.12(d) of the Penal Code; the information we have marked under section 552.117(a)(2) of the Government Code, including the officer's cellular telephone number, to the extent the officer paid for her cellular telephone service; the Texas driver's license numbers we have marked under section 552.130 of the Government Code; and the e-mail addresses we have marked under section 552.137 of the Government Code.³ The remaining information must be released.⁴

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

³Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note the information being released includes the requestor's Texas driver's license number, which is generally confidential under section 552.130 of the Government Code. Because this exception was enacted to protect a person's privacy, the requestor has a right of access to her own private information under section 552.023(a) of the Government Code. *See Gov't Code* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Furthermore, the information being released includes the requestor's e-mail address that is generally confidential under section 552.137(a) of the Government Code, to which she has a right of access under section 552.137(b) of the Government Code. If the city receives another request for this information from an individual other than this requestor, the city should again seek our decision.

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 cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 402663

Enc. Submitted documents

c: Requestor
(w/o enclosures)