



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2011

Ms. Teresa J. Brown
Senior Open Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2011-02103

Dear Ms. Brown:

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# 408823.

The City of Plano (the "city") received three requests from the same requestor for personnel records relating to three named city police officers. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the information you submitted.²

We first note some of the information submitted as Exhibit B does not pertain to any of the three named officers and thus is not responsive to these requests for information. We have marked the information that is not responsive to these requests. This decision does not address the public availability of the marked information, which need not be released in response to these requests.

¹Although you also initially raised sections 552.102, 552.103, 552.117, and 552.137 of the Government Code, but have submitted no arguments in support of the applicability of those exceptions, we assume the city no longer claims sections 552.102, 552.103, 552.117, and 552.137. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments stating why claimed exceptions apply to information at issue).

²This letter ruling assumes the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city 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).

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 other statutes make confidential. You claim section 552.101 in conjunction with section 143.089 of the Local Government Code.³ 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 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. *See id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See id.* § 143.051 *et seq.* 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 must be forwarded to the civil service commission for placement in the officer's civil service 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 officer's civil service file if the police department determines 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:

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

³You state the city is a civil service municipality under chapter 143 of the Local Government Code.

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 section 143.089(g) made the records confidential. *See id.* 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 indicate the information submitted as Exhibit C is held in personnel files pertaining to the named officers that the Plano Police Department maintains under section 143.089(g). Based on your representations and our review of the information at issue, we conclude the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.⁴

Next, we address the responsive information in Exhibit B, which you seek to withhold under section 552.108 of the Government Code. We note some of the information at issue falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(3) provides for required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]" unless the information is expressly made confidential under other law. Gov't Code § 552.022(a)(3). We have marked vouchers relating to the expenditure of public funds that are subject to section 552.022(a)(3). Although you seek to withhold the vouchers under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Gov't Code* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 could be waived). As such, section 552.108 is not other law that makes information confidential for purposes of section 552.022(a)(3). Therefore, the marked vouchers may not be withheld under section 552.108. As you claim no other exception to disclosure of the vouchers, they must be released pursuant to section 552.022(a)(3) of the Government Code.

Next, we address your claim under section 552.108 of the Government Code for the remaining responsive information in Exhibit B. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the

⁴As we are able to make this determination, we need not address your other arguments against disclosure of Exhibit C.

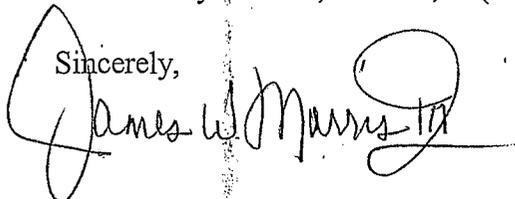
detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate, and having provided information reflecting, that the officers who are the subjects of these requests are witnesses in pending criminal investigations and prosecutions. You state the remaining responsive information in Exhibit B is related to the pending prosecutions because it could be used at trial to undermine the officers’ credibility, competence to testify, and qualifications as expert witnesses. You contend release of the information at issue would interfere with the investigation and prosecution of the pending cases. You also state the city has been asked by the Collin County District Attorney’s Office to claim section 552.108 on its behalf for the information at issue. Based on your representations and documentation, we conclude the city may withhold the remaining responsive information in Exhibit B under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

In summary: (1) the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; (2) the city must release the marked vouchers pursuant to section 552.022(a)(3) of the Government Code; and (3) the city may withhold the remaining responsive information in Exhibit B under section 552.108(a)(1) 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,



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

JWM/em

Ref: ID# 408823

Enc: Submitted documents

c: Requestor
(w/o enclosures)