



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 27, 2011

Mr. C. Patrick Phillips  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2011-05769

Dear Mr. Phillips:

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# 415734 (Fort Worth PIR No. W006542).

The City of Fort Worth (the "city") received a request for internal affairs cases in which allegations of misconduct were sustained against a named former officer with the Fort Worth Police Department (the "department"). You state some information will be released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the claimed exceptions 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 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 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 chapter 143 of the Local Government Code).

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. City of 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 in 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 are subject to release under the Act. *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 state the documents in Exhibit C are maintained in the department's internal file pursuant to section 143.089(g) and pertain to investigations into alleged misconduct in which no disciplinary action was taken. Upon review, we agree Exhibit C constitutes an internal file maintained by the department for its own use and thus is confidential under section 143.089(g) of the Local Government Code. Accordingly, 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.

Section 552.101 also encompasses section 550.065 of the Transportation Code. This section provides that, except as provided by subsection (c), accident reports are privileged and confidential. Transp. Code § 550.065(b). You state Exhibit E is a Texas Peace Officer's Crash Report that is confidential under this section. Section 550.065(c)(4) of the Transportation Code, however, requires the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). In this instance, the requestor has not provided the city with two of the three requisite pieces of information specified by the statute. Accordingly, the city must withhold Exhibit E under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential

pursuant to section 552.024. *See* Gov't Code §§ 552.117(a)(1), .024(b). The audio file in Exhibit D contains information protected by this section. You state the former officer at issue timely elected confidentiality under section 552.024. Therefore, the city must withhold the information subject to section 552.117. Because you state the city does not have the technological capacity to redact the audio file, the city must withhold the audio file in its entirety under section 552.117. However, you state the city will release a redacted transcript of this recording.

In summary, the city must withhold (1) Exhibit C under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code, (2) Exhibit E under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code, and (3) Exhibit D 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 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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID # 415734

Enc. Submitted documents

c: Requestor  
(w/o enclosures)