



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2011

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

OR2011-06290

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# 416689 (City of Fort Worth PIR No. W006799).

The City of Fort Worth (the "city") received a request for the requestor's internal affairs file. You claim that 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 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 that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (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 the records confidential. *See id.* at 949;

Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files). This confidentiality extends to any records maintained in the internal file that reasonably relate to the police officer's employment relationship. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied).

You represent the submitted records are taken from the city police department's personnel file for the officer at issue. Upon review, we agree the submitted records constitute an internal file maintained by the city's police department for its own use and thus, is confidential under section 143.089(g) of the Local Government Code. Accordingly, the city must generally withhold the submitted records under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

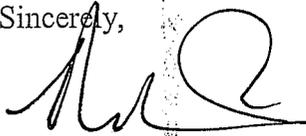
The submitted personnel records contain the requestor's fingerprint. Fingerprints are governed by chapter 560 of the Government Code. Section 560.001(1) provides that "[b]iometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." Gov't Code § 560.001(1). Under section 560.003 of the Government Code, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. Section 560.002 states, however, that "[a] governmental body that possesses a biometric identifier of an individual ... may not sell, lease, or otherwise disclose the biometric identifier to another person unless ... the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, the requestor has a right of access to her own fingerprint under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, we must address the conflict between the release provision of section 560.002 and the confidentiality provision of 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 unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. We find section 560.002 is a more specific statute than section 143.089 because chapter 560 of the Government Code applies specifically biometric identifiers, while section 143.089 applies generally to all records in the departmental file. Additionally, section 143.089 of the Local Government Code was enacted prior to the section 560.002 of the Government Code. *See* Gov't Code § 560.002, *added by* Act of May 26, 2001, 77th Leg., ch. 634, § 2 (effective Sept. 1, 2001); Loc. Gov't Code § 143.089, *added by* Act of March 1, 1989, 71st Leg., ch. 1, § 25(c) (effective Aug. 28, 1989), *amended by* Act of May 29, 1989, 71st Leg., ch. 1248, § 84 (effective Sept. 1, 1989). Therefore, the submitted fingerprint is subject to the chapter 560 of the Government Code, and must be released to the requestor.

In summary, the city must release the submitted fingerprint to the requestor under section 560.002 of the Government Code. The city must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 416689

Enc. Submitted documents

cc: Requestor
(w/o enclosures)