



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2011

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78723

OR2011-08888

Dear Mr. Weir:

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# 421746 (File No. W000479).

The City of San Antonio (the "city") received a request to view two categories of information, including (1) all records relating to or referencing any disciplinary actions or investigations involving a named fire fighter formerly employed by the city; and (2) the named fire fighter's employment application. You state the city does not have a copy of the requested employment application. You claim the submitted disciplinary 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.

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. 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 fire fighter: one that must be maintained as part of the fire fighter's civil service file and another that the fire department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The fire fighter's civil service file must contain certain specified items, including commendations, periodic evaluations by the fire fighter's supervisor, and documents relating to any misconduct in which the department

took disciplinary action against the fire fighter 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 fire department investigates a fire fighter's misconduct and takes disciplinary action against a fire fighter, 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 fire fighter'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 fire fighter'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 fire 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 inform us the submitted information is maintained in the San Antonio Fire Department's (the "department") personnel file for the named fire firefighter. You state, and the documents reflect, the employment of the department's fire fighters is governed by chapter 143 of the Local Government Code. Based on your representations and our review, we agree the submitted information maintained in the department's file is confidential and must be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

However, the submitted information pertains to misconduct for which the named fire fighter was suspended by the department. As previously stated, all information pertaining to charges of misconduct that resulted in disciplinary action must be maintained in the fire fighter's civil service file under section 143.089(a) of the Local Government Code. In this instance, the request was received by the city, which has access to the files maintained under sections 143.089(a) and 143.089(g); therefore, the request encompasses both of these files. Although you have not submitted the civil service file for our review, the submitted information must be included in that file. *See* 109 S.W.3d at 122. Furthermore, the documents are clearly addressed to, and reflect that they are maintained in, the fire fighter's civil service file. 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.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, family member information, and emergency

contact information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)).<sup>1</sup> Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. See Open Record Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. The submitted information contains the named fire fighter's home address and telephone number, and social security number. Accordingly, if this former employee did not timely elect confidentiality, his personal information may not be withheld under section 552.117(a)(1) of the Government Code. If, however, he timely elected to keep this information confidential, the city must withhold the information we marked under section 552.117(a)(1).

The submitted information includes the named fire fighter's driver's license number. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130).<sup>2</sup> Therefore, the city must withhold the marked driver's license number under section 552.130 of the Government Code.

Finally, the remaining information contains the named fire fighter's date of birth. 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." *Id.* § 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). Accordingly, the marked birth date must be withheld under section 552.102(a) of the Government Code. As you raise no other exceptions to disclosure, the remaining information must be released.

In summary, the city must withhold the submitted information maintained in the department's personnel file under section 552.101 of the Government Code in conjunction

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

<sup>2</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130, without the necessity of requesting an attorney general decision.

with section 143.089(g) of the Local Government Code. In releasing the submitted information from the named fire fighter's civil service file, the city must withhold the marked driver's license number pursuant to section 552.130 of the Government Code. The city must also withhold the marked birth date under section 552.102 of the Government Code. Lastly, if the named fire fighter timely elected to keep the information marked under section 552.117(a)(1) of the Government Code confidential, the city must withhold this information under that section and release the remaining information. Otherwise, the information marked under section 552.117(a)(1) must be released along with the remaining information contained in the named fire fighter's civil service file.

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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/eb

Ref: ID# 421746

Enc. Submitted documents

c: Requestor  
(w/o enclosures)