



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2011

Mr. Jeffrey T. Ulmann
For City of Kyle
Knight & Partners
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2011-09771

Dear Mr. Ulmann:

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# 423374.

The City of Kyle (the "city"), which you represent, received a request for five categories of information related to two city police officers, including the officers' personnel files, and records related to two specified incidents and any related disciplinary actions. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.¹ We have considered the exceptions 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 excepts from disclosure information deemed confidential by

¹Although you also raise section 552.107 of the Government Code, you provide no arguments explaining how this exception is applicable to the submitted information. Thus, we presume you have withdrawn your claim under this exception. See Gov't Code §§ 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested), .302).

statute, such as 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 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).² *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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You assert the submitted information consists of the city police department's internal records that are subject to the confidentiality provisions of section 143.089(g). You state this information consists of personnel records that are not required to be maintained in an officer's "public" file under section 143.089(a) and are maintained for the city police department's internal use. However, we note Exhibit B contains e-mails related to the two specified incidents that may be maintained by the department independently of any officer's personnel file. The city may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Thus, to the extent the submitted information is maintained solely in the officers' departmental files, it is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code. However, to the extent the e-mails in Exhibit B are maintained outside the officers' departmental files, they are not confidential under section 143.089 of the Local Government Code and may not be withheld under section 552.101 of the Government Code on that basis.

We next address your claim under section 552.117 of the Government Code for the information in Exhibit B that may be maintained outside the officers' departmental files. Section 552.117(a)(2) of the Government Code excepts from disclosure the home address,

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055.

home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Although you generally raise section 552.117 for the information at issue, we find it does not contain information subject to section 552.117. Thus, section 552.117 of the Government Code is not applicable to the information at issue.

We note some of the information at issue in Exhibit B may be 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).³ See *id.* § 552.137(a)-(c). We note that this exception is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The e-mail addresses at issue are not specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses at issue, a representative sample of which we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure.

In summary, to the extent the submitted information is maintained solely in the officers' departmental files, it is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code. To the extent the e-mails in Exhibit B are maintained outside the officers' departmental files, they are not confidential under section 143.089 of the Local Government Code and may not be withheld under section 552.101 of the Government Code on that basis; in that case, the city must withhold the e-mail addresses at issue, a representative sample of which we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure. The remainder of the independently maintained e-mails must be released to the requestor.

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,

³The Office of the Attorney General will raise a mandatory exception such as section 552.137 on behalf of a governmental body. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 423374

Enc. Submitted documents

c: Requestor
(w/o enclosures)