



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2011

Mr. Benjamin Sampract
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-2458

OR2011-14755

Dear Mr. Sampract:

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# 432596 (PIR No. W010500).

The City of Fort Worth (the "city") received a request for any personnel records detailing the training and disciplinary history of nine named officers. We note the requestor states that his request does not include the social security numbers, home addresses or telephone numbers, or other personal information of individuals mentioned in the requested information. Accordingly, these types of information are not responsive to the request. You state the city will release some of the requested information. You also state the city has redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).¹ See Gov't Code § 552.301(a); Open

¹Open Records Letter Nos. 2006-14726 and 2007-00198 are previous determinations to the city authorizing the city to withhold certain motor vehicle record information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercedes Open Records Letter Nos. 2006-14726 and 2007-00198 on September 1, 2011. Therefore, the city may only redact information subject to subsections 552.130(a)(1)

Records Decision No. 673 at 7-8 (2001). You claim the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note pages 1493 through 2035 of the information submitted as Exhibit C1 are not responsive to the instant request for information because they do not concern any of the named officers. This decision does not address the public availability of the non-responsive information and that information need not be released in response to the present request.

We now address your argument against disclosure of the responsive information in Exhibit C1. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, 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). *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.* Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055. Such records are subject to release under chapter 552 of the Government Code. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an officer’s alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov’t Code § 143.089(b). Information that reasonably relates to an officer’s employment relationship with the police department and that is 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. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000,

and (a)(3) in accordance with section 552.130, not Open Records Letter Nos. 2006-14726 and 2007-00198.

²Although you raise section 552.151 of the Government Code for the submitted information, we note the 82nd Texas Legislature renumbered section 552.151 to section 552.152 of the Government Code. Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20).

pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You raise section 143.089 of the Local Government Code for Exhibit C1. You inform us the city's police department maintains this information in its internal files pursuant to section 143.089(g). You also inform us this information relates to internal administrative investigations that did not result in disciplinary action, or did not result in discipline under chapter 143. Upon review, we agree some of the responsive information in Exhibit C1 constitutes information in the internal files maintained by the city's police department for its own use and, thus, is confidential under section 143.089(g). However, we note some of the remaining information in Exhibit C1 is related to an internal investigation, IA2007-0195, that resulted in the suspension of two of the named officers. We note that all of the investigatory materials relating to an investigation that resulted in disciplinary action must be held in the officers' civil service files. *See Abbott*, 109 S.W.3d at 122. We have marked the exhibits that were used in IA2007-0195 and must therefore be included in the civil service files of the two suspended officers pursuant to section 143.089(a). Therefore, the information we have marked in Exhibit C1 may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g). Accordingly, except for the information we have marked, we find the remaining responsive information in Exhibit C1 is confidential under section 143.089(g) and must be withheld under section 552.101.

We next turn to your arguments against disclosure of the information from IA2007-0195 submitted as Exhibit C2. You also raise section 143.089(g) for this exhibit. You inform us portions of this exhibit concern allegations of officer misconduct that did not result in disciplinary action or did not result in discipline under chapter 143. However, as noted above, IA2007-0195 pertains to an internal investigation that ultimately resulted in the suspensions of two of the five officers who were the subjects of that investigation. As previously noted, all investigatory materials relating to an investigation that resulted in disciplinary action must be held in that officer's civil service file. *See id.* Therefore, we conclude Exhibit C2 must be part of the suspended officers' civil service files under section 143.089(a). The fact that the remaining information contained in this exhibit might otherwise be held in a departmental file does not make such information confidential under section 143.089(g). *See* Local Gov't Code § 143.089(f); ORD 562 at 6; *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). Accordingly, Exhibit C2 is not confidential under section 143.089(g) and may not be withheld under section 552.101.

You raise section 552.152 of the Government Code for portions of Exhibit C2. Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances

pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20) (to be codified as Gov't Code § 552.152). Upon review of the information you have marked under this section, we find you have failed to demonstrate that release of this information would subject any officer to a substantial threat of physical harm. Therefore, the city may not withhold the information you marked under section 552.152.

We note that a portion of the remaining information is protected by common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Thus, the city must withhold the criminal history information we have marked under section 552.101 in conjunction with common-law privacy.

We also note that some of the remaining information is subject to section 552.130 of the Government Code.³ This section provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state, or another state or country, is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as amendments to Gov't Code § 552.130(a)(1), (2)). Accordingly, the city must withhold the driver's license and motor vehicle record information we have marked under section 552.130.

In summary, except for the information we marked, we find the remaining responsive information in Exhibit C1 is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code. The city must withhold the criminal history information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city also must withhold

³The 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).

the driver's license and motor vehicle record information we marked under section 552.130 of the Government Code. The remaining responsive information must be released.⁴

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 432596

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information being released contains the social security numbers of individuals. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).