



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2011

Mr. Tyler F. Wallach
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-2458

OR2011-16472

Dear Mr. Wallach:

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# 435674 (PIR No. W011144).

The City of Fort Worth (the "city") received a request for any personnel records, including all training, disciplinary history, and civil litigation relating to a named police officer. You state the city will release some of the requested information to the requestor. You have redacted social security numbers under section 552.147 of the Government Code.¹ You claim that 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.

We note the information submitted as Exhibit C-1, relating to internal investigation IA2007-0195, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-14755 (2011). In that ruling, we determined

¹Section 552.147 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. *See* Gov't Code § 552.147(b).

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).

that the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, as well as the driver's license and motor vehicle record information we marked under section 552.130 of the Government Code, and release the remaining information relating to IA2007-0195. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2011-14755 was based have changed. Accordingly, we conclude the city must continue to rely on Open Records Letter No. 2011-14755 as a previous determination and withhold or release the identical information in accordance with that ruling.³ See Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). With respect to the remaining submitted information, which was not ruled upon in Open Records Letter No. 2011-14755, we will consider your argument against disclosure.

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. 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

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

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, 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 C. You state you have released pages 1 through 3 of Exhibit C to the requestor. You inform us the city's police department maintains the remaining information in Exhibit C in an officer's civil service file pursuant to section 149.089(a). You assert that the information at issue, internal investigation IA2007-0061, did not result in disciplinary action, and is therefore maintained in the named officer's internal file pursuant to section 143.089(g). We note the information at issue is related to an internal investigation that resulted in the named officer's suspension. Upon review, we find that although the named officer was not disciplined for violations of the policies listed in the information at issue, the officer was suspended for other policy violations arising from the same incident. 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. The information at issue must therefore be included in the civil service file of the named officer pursuant to section 143.089(a). Accordingly, the information at issue may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g).

We note the remaining information includes information subject to Section 552.117(a)(2) of the Government Code.⁴ Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the peace officer made an election under section 552.024 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)); *see* Open Records Decision Nos. 622 (1994), 670 at 6 (2001) (determining that a governmental body may withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision). The remaining information contains information pertaining to the named officer. Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

In summary, the city must continue to rely on Open Records Letter No. 2011-14755 as a previous determination and withhold or release Exhibit C-1 in accordance with that ruling.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

The city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The remaining information must be released.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 435674

Enc. Submitted documents

c: Requestor
(w/o enclosures)