



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2011

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79408-2000

OR2011-16868

Dear Ms. Sims:

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# 436763.

The City of Lubbock (the "city") received a request for the "official notice placing [two named city police officers] on administrative leave, their written response, and any other public record documents related to their current employment status with [the Lubbock Police Department (the "department")]"; documents related to the city's or department's actions to identify and terminate department employees who accessed internet websites in violation of employee policies and procedures within the last sixty days; and documents related to the department's investigations of employees identified to be in violation of employee policies. You claim 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.

Initially, we note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter

¹ Although you also raise section 552.108 of the Government Code in conjunction with section 143.089 of the Local Government Code, we note section 552.108 does not encompass other statutory provisions. As you have not provided any other arguments explaining the applicability of section 552.108, we will not address the applicability of this exception to the submitted information. Additionally, although you also raise section 552.1175 of the Government Code, the proper exception in this instance is section 552.117 of the Government Code because the city holds the information at issue in an employment context.

No. 2011-15868 (2011). We have no indication the law, facts, and circumstances on which Open Records Letter No. 2011-15868 was based have changed. Accordingly, with regard to the requested information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude the city must continue to rely on Open Records Letter No. 2011-15868 as a previous determination and withhold the previously ruled upon information in accordance with that ruling. *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). To the extent the submitted information is not encompassed by the previous ruling, we will address your argument against its release.

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 other statutes make confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code. We understand 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 police officer: one that must be maintained as part of the officer’s civil service file and another the police department may maintain for its own internal use. *See* Local Gov’t Code § 143.089(a), (g). The officer’s civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer’s supervisor, and documents relating to any misconduct in which the department took disciplinary action against the officer 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 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). *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 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 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 police 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).

The submitted notices of administrative leave and the police officers' responses to those notices pertain to pending internal affairs investigations regarding the named police officers' alleged misconduct, for which no disciplinary action has been taken. You indicate the submitted information is maintained in the department's internal files as authorized under section 143.089(g) of the Local Government Code. Based on this representation and our review, we find this information is confidential pursuant to section 143.089(g). Accordingly, the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. You also seek to withhold the police officers' retirement notices and retirement forms under section 143.089(g). You state this information was placed in the police officers' civil service file. Thus, we conclude you have failed to demonstrate section 143.089(g) is applicable to any portion of the retirement notices and forms. Consequently, the city may not withhold the information at issue under section 552.101 in conjunction with section 143.089(g). However, we will address your claim under section 552.117 of the Government Code for portions of the retirement forms.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 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)). It is unclear whether or not the named department police officers, who have retired, are currently licensed peace officers as defined by article 2.12. Thus, if the former department police officers are a currently licensed peace officer as defined by article 2.12, the city must withhold the information you have marked under section 552.117(a)(2). If, however, the former department officers are not currently licensed peace officers, their personal information may not be withheld under section 552.117(a)(2).

However, if the former department police officers are no longer licensed peace officers, then their personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential 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)). 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 the information. *See* Open Records 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 the information. Therefore, if the former department police officers are no longer licensed peace officers as defined by article 2.12, then to the extent they timely elected confidentiality under section 552.024, the city must withhold the information you have marked under section 552.117(a)(1). If, however, the former department police officers are

no longer licensed peace officers and did not timely elect to keep their personal information confidential, their marked personal information must be released.

In summary, the city must withhold the notices of administrative leave and the department police officers' responses to those notices under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. If the former department police officers are currently licensed peace officers as defined by article 2.12, the city must withhold the information you have marked under section 552.117(a)(2) of the Government Code. If the former department police officers are no longer peace officers as defined by article 2.12, then to the extent they timely elected confidentiality under section 552.024 of the Government Code, the city must withhold the information you have marked under section 552.117(a)(1) 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 436763

Enc. Submitted documents

c: Requestor
(w/o enclosures)