



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2012

Ms. Victoria Huynh
Deputy City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2012-00583

Dear Ms. Huynh:

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# 442086.

The Plano Fire Department (the "fire department") and the Plano Police Department (the "police department") each received a request from different requestors for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the second requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you acknowledge that some of the submitted information was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2011-12286 (2011). In that ruling, we concluded the information at issue may be withheld under section 552.108(a)(1) of the Government Code. However, you state the criminal case at issue in that ruling is now closed. Therefore, we find the facts and circumstances have changed, and Open Records Letter No. 2011-12286 may not be relied on as a previous determination. Accordingly, we will consider your argument against disclosure of 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.” *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes such as section 143.089 of the Local Government Code. You inform us that 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 for each fire fighter employed by a civil service city: a fire fighter’s civil service file that the civil service director is required to maintain, and an internal file that the fire department may maintain for its own use. 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).

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).¹ *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 fire department because of its investigation into a fire fighter’s misconduct. *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, a document relating to a fire fighter’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). In addition, a document relating to disciplinary action against a fire fighter that has been placed in the fire fighter’s personnel file as provided by section 143.089(a)(2) must be removed from the fire fighter’s file if the civil service commission finds the disciplinary action was taken without just cause or the charge of misconduct was not supported by sufficient evidence. *See id.* § 143.089(c). Information that reasonably relates to a fire fighter’s employment relationship with the fire department and that is maintained in a fire department’s internal file pursuant to section 143.089(g) is confidential and must not be released. *See 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).

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. Local Gov’t Code §§ 143.051-.055; *see, e.g.*, Attorney General Opinion JC-0257 (2000) (written reprimand is not disciplinary action for purposes of chapter 143).

You inform us the submitted information pertains to the fire department's internal investigation of the specified incident. You state this investigation did not result in any disciplinary action under chapter 143. Further, you inform us the submitted information is maintained in the fire department's internal file pursuant to section 143.089(g). We note, however, the submitted information includes law enforcement records that are also maintained by the police department separate and apart from the fire department's investigation. The requestors do not specifically seek information from a fire fighter's personnel file maintained by the fire department. Instead, the requestors specifically seek law enforcement records related to the specified incident. Thus, both information in a fire fighter's personnel file and any investigatory materials that the police department maintains for law enforcement purposes are responsive. The confidentiality afforded to records under section 143.089(g) may not be engrafted onto records that exist independently of the fire department's internal files. Accordingly, based on your representations and our review, we agree the records the fire department submitted in response to the first requestor's request for information are confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, the remaining information, which consists of the records submitted by the police department in response to the second requestor's request for information, constitutes law enforcement records that are not confidential under section 143.089(g) and may not be withheld under section 552.101 on that basis.

We note the remaining information contains the first requestor's driver's license number. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's or driver's license or permit issued by any agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1).² We also note that section 552.130 protects personal privacy. Accordingly, the first requestor has a right of access to his own driver's license number under section 552.023 of the Government Code. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Therefore, the driver's license number we have marked in the remaining information must be withheld from the second requestor under section 552.130 of the Government Code.

In summary, the information submitted by the fire department must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The driver's license number we marked in the remaining information

²The 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).

must be withheld from the second requestor under section 552.130 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 442086

Enc. Submitted documents

c: Requestors
(w/o enclosures)