



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2012

Mr. Mark G. Daniel
For the City of Watauga
Evans, Daniel, Moore, Evans & Lazarus
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2012-00988

Dear Mr. Daniel:

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# 442860 (ORR 11-117).

The Watauga Police Department (the "department"), which you represent, received a request for eight categories of information: (1) statistics for the number of traffic code violation citations issued during a specified time period; (2) statistics for the number of traffic code violation warning tickets issued during the same time period; (3) statistics for the number of speeding violation citations issued during the same time period; (4) statistics for the total dollar amount in fines collected and outstanding due to traffic code violations from the same time period; (5) statistics for the number and/or amount of verified complaints made against department officers during the same time period; (6) statistics for the number of specified verified reprimands issued against department officers during the same time period; (7) the City of Watauga policy outlining all the guidelines that department traffic officers must comply with; and (8) the required traffic violator "contact quote amount" set for all department traffic officers. You state you have released most of the requested information. You state the department does not have information responsive to category eight of the request.¹ You claim that portions of the submitted information are excepted from disclosure

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you have highlighted portions of Exhibit B as not responsive to the request for information. 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. However, as you raise no exceptions to disclosure of the responsive information in Exhibit B, it must be released.

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 inform us the City of Watauga 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, 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 the information you have highlighted in Exhibit C. You inform us that the department maintains this information in its internal files pursuant to section 143.089(g). You also inform us that the information at issue is related to alleged misconduct by department officers for which no disciplinary action was taken. However, we note this information appears to be maintained by the department

independently of any officer's personnel file. The department 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 information you highlighted in Exhibit C is maintained solely in the officers' departmental files, it is confidential under section 143.089(g) and must be withheld in conjunction with section 552.101. However, to the extent this information is maintained outside of the officers' departmental files, it is not confidential under section 143.089(g) and may not be withheld in conjunction with section 552.101. In that instance, as you raise no other exceptions to disclosure of the information you highlighted in Exhibit C, the department must release it.

In summary, the responsive information in Exhibit B must be released. To the extent the information you highlighted in Exhibit C is maintained solely in the officers' departmental files, it must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, to the extent this information is maintained outside of the officers' departmental files, the department must release it.

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# 442860

Enc. Submitted documents

c: Requestor
(w/o enclosures)