



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2012

Mr. John S. Schneider
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501-0672

OR2012-01270

Dear Mr. Schneider:

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# 443516 (SL1188).

The City of Pasadena (the "city") received a request for all personnel, training, discipline, and internal affairs investigation records pertaining to two named officers. You claim the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which is a representative sample.¹

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 section encompasses information made confidential by other statutes, such as section 143.089 of the Local Government Code. We understand the City of Pasadena 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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records at issue. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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).

You state the completed internal affairs investigation reports in Exhibits C, D, and E relate to misconduct that resulted in the suspension of the police officers named in the request, and you inform us the officers are now appealing their suspensions. You contend this information must be maintained in the police department's confidential internal files created under section 143.089(g) because of the pending appeals. We note an officer's civil service file must contain documents relating to any misconduct in those cases where the police department took disciplinary action against the officer. *See* Local Gov't Code § 143.089(a)(2); *see also id.* §§ 143.051-.055 (describing “disciplinary action” for purposes of section 143.089(a)(2)); Attorney General Opinion JC-0257 (2000). Section 143.089(c) provides information that must be placed in a civil service file under section 143.089(a)(2) may be removed if the civil service commission determines (1) the disciplinary action was taken without just cause or (2) the charge of misconduct was not supported by sufficient evidence. *See* Local Gov't Code § 143.089(c). Section 143.089(c), therefore, signifies complaint files resulting in disciplinary action must be placed in the civil service file during the pendency of the appeal. Accordingly Exhibits C, D, and E must be maintained in the officers' civil service files pursuant to section 143.089(a)(2), and are not confidential under section 143.089(g).

We understand, based on your current arguments as well as your previous arguments to this office, that Exhibits A and B are maintained in the officers' civil service files. We note that section 143.089(e) of the Local Government Code grants a right of access to a police officer for “any letter, memorandum, or document placed in the person's personnel file.” *See id.* § 143.089(e). This office has interpreted this provision to grant a police officer an

affirmative right of access to the information in his or her personnel file maintained under section 143.089(a). *See* Open Records Decision No. 650 at 2 n.2 (1996). In this instance, the requestor has provided the city with a signed authorization form from both of the named officers to release the requested information. Thus, this requestor has a statutory right of access to the named officers' civil service files. You seek to withhold the submitted information under section 552.103 of the Government Code. We note you have redacted one of the named officer's social security number and addresses under section 552.117(a)(2) of the Government Code.² We also note the information in Exhibit C contains an e-mail address of a member of the public, subject to section 552.137 of the Government Code.³ However, sections 552.103, 552.117, and 552.137 are all general exceptions to disclosure. This office has found that a statutory right of access overcomes general exceptions to disclosure under the Act. *See* Open Records Decision Nos. 613 at 3 (1994) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, the city may not withhold any of the submitted information under these exceptions.

Portions of the information in Exhibit C are subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state, or another state or country. Gov't Code § 552.130(a)(1)-(2). As previously noted, the requestor has a statutory right of access to the information at issue, and a specific statutory right of access prevails over general exceptions to disclosure. *See* ORDs 613 at 4, 451 at 4. However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Accordingly, we must address the conflict between the access provided under section 143.089(e) of the Local Government Code and the confidentiality provided under section 552.130 of the Government Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails over the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex.

²Additionally, we note you have also redacted a date of birth and source of income. You do not assert, nor does our review of our records indicate, you have been authorized to withhold a date of birth or source of income. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, this information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the city should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

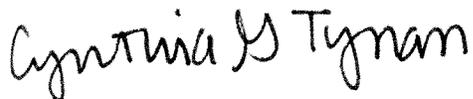
Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, section 143.089 generally applies to personnel records of a peace officer. Section 552.130 specifically protects motor vehicle record information. Thus, we find the confidentiality provided by section 552.130 is more specific than the general right of access provided by section 143.089(e). Accordingly, the city must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked in Exhibit C under section 552.130 of the Government Code. The remaining information must be released to this requestor.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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/dls

Ref: ID# 443516

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴Because the requestor has a special right of access to some of the information being released, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office.