ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 29, 2012

Ms. Lysia H. Bowling
City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902-1751

OR2012-03131

Dear Ms. Bowling:

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# 446832.

The City of San Angelo (the "city") received a request for information related to a specified automobile accident, including any related dash cam video recordings. You claim that 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.

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. You inform us 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). The police officer's civil service file must contain specific items, including commendations, periodic evaluations by the officer's supervisor, and documents from the employing department relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code.[1] *See id.* § 143.089(a)(1)-(2). In cases in which a police department investigates an officer's misconduct and takes

[1]Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055.

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.* Such records are subject to release under chapter 552 of the Government Code. *See* Local Gov't Code § 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 a police officer's employment relationship with the police department and that is maintained in a police department's internal personnel 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. Tex. Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied).

You state the submitted information is kept in the city police department's (the "department") personnel file for the officer at issue and is maintained under section 143.089(g). You state the submitted information relates to an ongoing internal affairs investigation that has not yet resulted in disciplinary action against the involved officer. We note, however, the information consists of law enforcement records, which are also maintained separate and apart from the internal affairs investigation. The present request does not specifically seek information from an officer's personnel file maintained by the department. Instead, the requestor seeks information related to the automobile accident at issue. Because the requestor generally seeks the specified report and dash cam video, both information in an officer's personnel file and any copies of investigatory materials the department maintains for law enforcement purposes are responsive. The city may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Accordingly, we find the submitted information is not confidential under section 143.089(g) of the Local Government Code and may not be withheld under section 552.101 of the Government Code on that basis.

We note the submitted information contains an accident report governed by section 550.065 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c) or (e), accident reports are privileged and for the confidential use of certain specified entities. *Id.* § 550.065(b). The submitted crash report was completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of

information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the city with the requisite information for the submitted crash report. Accordingly, the city must release this report in its entirety to the requestor.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country.[2] Gov't Code § 552.130(a)(2). Upon review, we find the city must withhold the license plate numbers we have indicated in the submitted dash cam video under section 552.130 of the Government Code.

In summary, the city must release the submitted crash report pursuant to section 550.065 of the Transportation Code. The city must withhold the license plate number we have indicated in the submitted dash cam video 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,

Vanessa Burgess
Assistant Attorney General
Open Records Division

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[2]The 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).

Ref: ID# 446832

Enc. Submitted documents

c: Requestor
(w/o enclosures)