



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2012

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2012-04654

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# 453549.

The City of Lubbock (the "city") received two requests for information pertaining to a specified incident. You state a portion of the requested information is subject to a previous ruling from this office. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

We first address your argument that most of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-15336 (2011). In this prior ruling, we ruled that, with the exception of basic information that must be released pursuant to section 552.108(c) of the Government Code, the city could withhold the information at issue under section 552.108(a)(2) of the Government Code. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the city must rely on Open Records Letter No. 2011-15336 as a previous determination and release or withhold the information subject to that ruling in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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). However, we will address your argument against disclosure for the submitted information, which you state was not subject to the prior ruling.

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 is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files for police officers in a civil service city: a civil service file the civil service director is required to maintain and an internal file the police department may maintain for its own use. 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; *see* Attorney General Opinion JC-0257 (written reprimand is not disciplinary action for purposes of chapter 143 of the Local Government Code).

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. 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 the Act. *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.*, 351 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the submitted information is maintained in the city police department’s (the “department”) internal file pursuant to section 143.089(g) and pertains to an investigation into alleged misconduct in which no disciplinary action was taken. Upon review, we agree the submitted information constitutes an internal file maintained by the department for its own use. Thus, the submitted information is confidential under section 143.089(g) of the

Local Government Code and must be withheld under section 552.101 of the Government Code.

In summary, the city must to rely on Open Records Letter No. 2011-15336 as a previous determination and release or withhold the information subject to that ruling in accordance with it. The city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 453549

Enc. Submitted documents

c: Requestor
(w/o enclosures)