



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2012

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2012-05213

Dear Ms. Pemberton:

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# 450514 (ID# W007174).

The City of Killeen (the "city") received a request for information pertaining to a former police officer with the city's police department. You state the city has released some of the requested information, but 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.

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 excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. You state 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). 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).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 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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You indicate Exhibit C consists of the city’s internal files created pursuant to section 143.089(g). We note Exhibit C contains a periodic evaluation of the officer. This type of information is subject to section 143.089(a) and must be placed in the officer’s civil service file, unless the city has already done so. *See* Local Gov’t Code § 143.089(a)(1), (3). Nevertheless, based on your representations and our review, we agree Exhibit C is confidential pursuant to section 143.089(g) of the Local Government Code. However, the requestor has provided an authorization and release form signed by the individual whose information is at issue. Exhibit C contains mental health records and fingerprints of the former employee. Thus, we must address the applicability of chapter 611 of the Health and Safety Code and chapter 560 of the Government Code to this information.

Chapter 611 of the Health and Safety Code governs the release of records created or maintained by a mental health professional. Section 611.002(a) states “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Health & Safety Code § 611.001(b). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the information in Exhibit C constituting mental health records that the city may only release in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

Chapter 560 of the Government Code provides a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov’t Code §§ 560.001 (defining “biometric identifier” to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). Exhibit C contains the fingerprints of the former employee. This

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-143.055.

information is confidential under section 560.003. However, the requestor has a right of access to this information pursuant to section 560.002. *See id.* § 560.002(1).

Thus, there is a conflict between the confidential provisions of section 143.089 of the Local Government Code and the access provisions of chapter 611 of the Health and Safety Code and section 560.002 of the Government Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute, unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See id.* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Chapter 611 of the Health and Safety Code applies specifically to mental health records and section 560.002 of the Government Code applies specifically to fingerprints, while section 143.089 of the Local Government Code applies generally to all records in a personnel file. Additionally, section 143.089 was enacted prior to section 560.002 of the Government Code. *Compare* Act of May 26, 2001, 77th Leg., R.S., ch. 634, § 2, 2001 Tex. Gen. Laws 1195, 1196 (enacting statutory predecessor to section 560.002 of the Government Code), *with* Act of March 1, 1989, 71st Leg., R.S., ch. 1, § 25(c), 1989 Tex. Gen. Laws 4996, 5043 (enacting section 143.089 of Local Government Code). While chapter 611 of the Health and Safety Code was enacted before section 143.089, it does not appear it was the legislature's manifest intent for the more general provision to prevail. *See* Act of May 9, 1979, 66th Leg., R.S., ch. 239, § 1, 1979 Tex. Gen. Laws 512 (enacting statutory predecessor to chapter 611 of the Health & Safety Code). Therefore, the city may only release the marked mental health records in accordance with chapter 611 of the Health and Safety Code and must release the marked fingerprints pursuant to section 560.002 of the Government Code, but it must withhold the remaining information in Exhibit C under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Prior decisions of this office have found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Some of the remaining documents contain personal financial information of the former employee. However, the requestor has a right of access to the former employee's private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests”); Open Records Decision No. 481

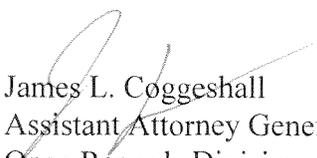
at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the city may not withhold any of the remaining information from disclosure under section 552.101 in conjunction with common-law privacy.

We conclude the following: the city (1) may only release the marked mental health records in accordance with chapter 611 of the Health and Safety Code, (2) must release the marked fingerprints pursuant to section 560.002 of the Government Code, (3) must withhold the remaining information in Exhibit C under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code, and (4) must release the remaining information.²

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 450514

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a special right of access to the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.