



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2012

Ms. Elizabeth L. White
Counsel for the City of Seabrook
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2012-05477

Dear Ms. White:

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# 451032.

The City of Seabrook (the "city"), which you represent, received a request for the complete personnel file of a named police officer. You state the city will release some of the requested information with redactions under section 552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670 (2001).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.114, 552.115, 552.117, 552.119, 552.122, 552.130, 552.136, 552.137, 552.140, and 552.147 of the Government Code.² We

¹Open Records Decision No. 670 allows a governmental body to withhold a peace officer's home address and telephone number, personal cellular telephone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. *See* Open Records Decision No. 670 (2001); Gov't Code § 552.147(b).

²Although you also raise section 552.024 of the Government Code as an exception to disclosure, we note this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024. Further, although you raise section 552.101 of the Government Code in conjunction with sections 552.114, 552.115, 552.117, 552.1175, 552.119, 552.130, 552.136, and 552.147 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Moreover, although you also raise section 552.1175 of the Government Code, we note section 552.117 is the proper exception for information the city holds in an employment capacity.

have considered the exceptions you claim and reviewed the submitted representative sample of information.³

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 protected by 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 provides for the maintenance of two different types of personnel files for each police officer employed by a civil service city: one that must be maintained as part of the officer’s civil service file and another that the police department may maintain for its own internal use. *See* Local Gov’t Code § 143.089(a), (g). Under section 143.089(a), 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 any instance 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. A letter of reprimand does not constitute discipline under chapter 143. *See* Attorney General Opinion JC-0257. 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). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer’s civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See* Local Gov’t Code § 143.089(b)-(c).

³We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *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.

Section 143.089(g) authorizes a police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. *See id.* § 143.089(g). Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Local Gov't Code § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex.App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined section 143.089(g) made these records confidential. *See* 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting confidentiality under Local Gov't Code § 143.089(g) to "information reasonably related to a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You indicate the submitted information is maintained in the city's police department's internal personnel file for the named officer under section 143.089(g). You state the submitted information consists of personnel information and complaints or investigations that did not result in disciplinary action against the named officer. Based on your representation and our review, we find most of the submitted information, which we have marked, is confidential under section 143.089(g) of the Local Government Code and must be withheld from disclosure under section 552.101 of the Government Code.⁴ However, we note the remaining information relates to an investigation pertaining to an allegation of misconduct against the named officer that ultimately resulted in a three-day suspension of the officer. This information, which we have marked, relates to misconduct that resulted in disciplinary action pursuant to section 143.089. Thus, while this information may be kept in the internal file maintained under subsection 143.089(g), it must also be kept in the civil service personnel file maintained under subsection 143.089(a). *See* Local Gov't Code § 143.089(a)(2). In this instance, the request was received by the city, which has access to the files maintained under both subsections 143.089(a) and 143.089(g); therefore, the request encompasses both of these files. Accordingly, the city may not withhold the remaining

⁴As our ruling is dispositive for this information, we need not address your arguments under sections 552.114, 552.115, 552.119, 552.122, 552.130, 552.136, 552.137, 552.140, and 552.147 against its disclosure.

information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, we will consider your remaining arguments against disclosure of this information.

The remaining information includes a CR-3 Texas Peace Officer's Crash Report that is subject to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code, which states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation (the "department") or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.⁵ In this instance, the requestor has not provided the city with two of the three pieces of required information pursuant to section 550.065(c)(4). Accordingly, the city must withhold the submitted CR-3 report, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Portions of the remaining information are subject to section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must also withhold the marked CR-3 crash report under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code and the information we marked under section 552.117(a)(2) of the Government Code. The city must release the remaining information.

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.

⁵*See* Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 451032

Enc. Submitted documents

c: Requestor
(w/o enclosures)