



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 14, 2012

Mr. Stephen A. Cumbie
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2012-09181

Dear Mr. Cumbie:

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# 456257 (Fort Worth PIR No. W015781).

The City of Fort Worth (the “city”) received a request for eight categories of information pertaining to a named police officer. You indicate you will redact motor vehicle record information subject to section 552.130(a)(2) of the Government Code pursuant to previous determinations issued to the city in Open Records Letter Nos. 2007-00198 (2007) and 2006-14726 (2006).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions 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 exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with 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 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 city took disciplinary action against the

¹Open Records Letter Nos. 2007-00198 and 2006-14726 are previous determinations authorizing the city to withhold certain information subject to section 552.130(a)(2) of the Government Code without the necessity of requesting an attorney general decision.

officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(3). 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 Local Gov't Code chapter 143). 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 police department because of its investigation into a police officer's misconduct, and the police department must forward them to the civil service commission for placement in the civil service personnel file. *See id.* at 119-22. 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).

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. You state the information you have marked as Exhibit “C” is held in a personnel file pertaining to the named officer that the city's police department maintains under section 143.089(g). You state the information contains allegations of misconduct against the officer that were either determined to be unfounded or did not result in disciplinary action. Based on your representations and our review, we agree the information found at pages 51-96 of the submitted PDF is confidential pursuant to section 143.089(g) of the Local Government Code. Thus, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.² However, the remaining information consists of commendations and periodic evaluations by the police officer's supervisor, which must be maintained in the named police officer's civil service personnel file pursuant to section 143.089(a)(2) and may not be withheld under section 143.089(g). *See* Local Gov't Code § 143.089(a)(2); *Abbott v. Corpus Christi*, 109 S.W.3d at 122. Therefore, we will consider your arguments against disclosure of the remaining information.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, emergency contact information, social security

²As our ruling is dispositive, we do not address your remaining arguments against disclosure of this information.

number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code.³ 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. Thus, the city must withhold the information you have marked in the commendations under section 552.117(a)(2) of the Government Code.

In summary, the city must withhold pages 51-96 of the submitted PDF under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code and the information you have marked under section 552.117(a)(2) 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,



Benjamin A. Bellomy
Assistant Attorney General
Open Records Division

BAB/dls

Ref: ID# 456257

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Although you raise section 552.117(a)(1) of the Government Code as an exception to disclosure of this information, we note section 552.117(a)(2) is the proper exception to raise when seeking to withhold information related to a police officer. See Gov't Code § 552.117(a)(2).