



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 26, 2012

Mr. Stephen A. Cumbie  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2012-09855

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# 457154 (PIR Request# W016073).

The City of Fort Worth (the "city") received a request for a copy of the requestor's personnel file. You state the city will release a majority of the requested information. You 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. 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) 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). The requestor has not provided the city with two of the three requisite pieces of information specified by the statute for release of any of the accident reports in Exhibit C. Accordingly, the city must withhold the accident reports in Exhibit C, which we have marked, under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses 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 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 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 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 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. *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). However, a document relating to a police officer's alleged misconduct may not be placed in his civil service 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 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, 949 (Tex. App.—Austin 1993, writ denied).

You state the remaining information in Exhibit C is maintained in the city police department's own internal files. You further state the information pertains to investigations of allegations that were either unfounded or did not result in disciplinary action under chapter 143. Based on these representations and our review, we agree the remaining information in Exhibit C is generally confidential under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

However, we note this information contains the analysis of a breath specimen belonging to the requestor that was obtained by a peace officer. Section 724.018 of the Transportation Code provides that “[o]n the request of a person who has given a specimen at the request of

a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney." Transp. Code § 724.018. In this instance, the requestor is the individual who gave the breath specimen at the request of a peace officer. Accordingly, we find the requestor has a right of access to this information, which we have marked, under section 724.018 of the Transportation Code.

Thus, although the analysis of the requestor's breath specimen is generally confidential under section 143.089(g) of the Local Government Code, section 724.018 provides the requestor with a right of access to this information. Therefore, there is a conflict between the confidentiality provision of section 143.089(g) and the right of access provision of section 724.018. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision, unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 143.089(g) of the Local Government Code applies generally to all records in a personnel file, section 724.018 of the Transportation Code specifically permits release of information pertaining to the analysis of a breath specimen to certain parties. Additionally, section 143.089 of the Local Government Code was enacted prior to section 724.018 of the Transportation Code. *See* Transp. Code § 724.018, *added by* Act of May 23, 1995, 74th Leg., ch. 165, § 1 (effective Sept. 1, 1995); Loc. Gov't Code § 143.089, *added by* Act of March 1, 1989, 71st Leg., ch. 1, § 25(c) (effective Aug. 28, 1989), *amended by* Act of May 29, 1989, 71st Leg., ch. 1248, § 84 (effective Sept. 1, 1989). We, therefore, conclude the information we have marked pertaining to the analysis of a breath specimen may not be withheld from this requestor under section 143.089(g). Thus, the city must release the information we have marked pertaining to the analysis of a breath specimen to the requestor under section 724.018 of the Transportation Code.

In summary, the city must withhold the accident reports we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Government Code. The city must release the information we have marked pertaining to the analysis of a breath specimen to the requestor under section 724.018 of the Transportation Code. The city must withhold the remaining 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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bhf

Ref: ID# 457154

Enc. Submitted documents

c: Requestor  
(w/o enclosures)