



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2012

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

OR2012-13926

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# 464159 (PIR No. W017547).

The City of Fort Worth (the "city") received a request for information involving a named city police officer and a specified time period.¹ You inform us the city has redacted some of the submitted information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and the previous determination issued under section 552.130(a)(2) in Open Records Decision No. 684 (2009).² You also inform us some of the submitted information either has been or will be released. You claim the rest of the submitted information is excepted from

¹You inform us the requestor subsequently narrowed his initial request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (when governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²Section 552.130(c) authorizes a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of requesting a decision from this office. *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide notice to requestor). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold specified categories of information without requesting a decision, including a Texas license plate number under section 552.130. Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without requesting a decision.

disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code.³ We have considered the exceptions you claim and reviewed the information you submitted.

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 claim section 552.101 in conjunction with section 143.089 of the Local Government Code.⁴ Section 143.089 provides for the existence of two different types of personnel files relating to a police officer, including 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 any instance in which the police department took disciplinary action against the officer under chapter 143 of the Local Government Code. See *id.* § 143.089(a)(1)–(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See *id.* § 143.051 *et seq.* 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).

³Although you do not specifically claim section 552.130, you have marked information the city seeks to withhold under that section. Accordingly, we will address section 552.130, which is a mandatory exception to disclosure. See Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). We note you also appear to raise section 552.108 of the Government Code but have submitted no arguments in support of the applicability of that exception. Therefore, this decision does not address section 552.108. See Gov’t Code § 552.301(e)(1)(A) (governmental body must submit written comments stating why claimed exception is applicable to information at issue).

⁴You state the city is a civil service municipality under chapter 143 of the Local Government Code.

Subsection(g) of section 143.089 authorizes the police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. 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.

Id. § 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 the 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 the records confidential. *See id.* at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet.) (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).

The present request for information was received by the city, which has access to civil service files maintained under section 143.089(a) and personnel files maintained by the city's police department (the "department") under section 143.089(g). Therefore, the request encompasses all such files. You indicate the information in the submitted folder titled "G File" is held in personnel files maintained by the department. You state the "G File" information is related to allegations of misconduct that either were determined to be unfounded or did not result in disciplinary action under chapter 143 of the Local Government Code. Based on your representations and our review, we conclude the city must withhold the "G File" information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. We note the information submitted as Exhibit C is related to an internal affairs investigation in which disciplinary action was taken against a police officer under chapter 143 of the Local Government Code. Thus, as previously explained, the information in Exhibit C must be maintained in the officer's civil service file under section 143.089(a)(2) and may not be withheld under section 552.101 in conjunction with section 143.089. *See* Local Gov't Code § 143.089(a)(2), (f); *Abbott v. Corpus Christi*, 109 S.W.3d at 122; ORD 562 at 6. We will determine, however, whether the city must withhold any of the information in Exhibit C on other grounds.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which states "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003;

see id. § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 states “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). We conclude the city must withhold the fingerprints you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). Financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public’s interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). We conclude the information you have marked under common-law privacy and the additional information we have marked are highly intimate or embarrassing and not a matter of legitimate public interest. As such, the information you have marked and the additional information we have marked must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336, 348 (Tex. 2010). We conclude the city must withhold the information you have marked, along with the additional information we have marked, under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from 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 officer has family members, regardless of whether the officer complies with sections 552.024 or 552.1175 of the Government Code. *See Gov't Code § 552.117(a)(2)*. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We note section 552.117(a)(2) protects a peace officer's personal cellular telephone or pager number if the officer pays for the cellular telephone or pager service with his or her personal funds. *See Open Records Decision No. 670 at 6 (2001) (Gov't Code § 552.117(a)(2) excepts from disclosure peace officer's cell phone or pager number if officer pays for cell phone or pager service)*. You have marked information the city seeks to withhold under section 552.117. We find some of the marked information does not fall within the scope of the exception. We have marked that information, which must be released. We conclude the city must withhold the remaining information you have marked under section 552.117(a)(2) of the Government Code.

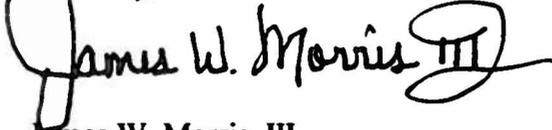
Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See Gov't Code § 552.130(a)(1)-(2)*. Along with the information the city is authorized to redact pursuant to section 552.130(c) and Open Records Decision No. 684, you have marked other information the city seeks to withhold under section 552.130. We find some of the marked information does not fall within the scope of the exception. We have marked that information, which must be released. We conclude the city must withhold the remaining information you have marked and the additional information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold (1) the "G File" information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; (2) the fingerprints you have marked under section 552.101 in conjunction with section 560.003 of the Government Code; (3) the information you have marked and the additional information we have marked under section 552.101 in conjunction with common-law privacy; (4) the information you have marked and the information we have marked under section 552.102(a) of the Government Code; (5) the information you have marked under section 552.117(a)(2) of the Government Code, except for the information we have marked for release; and (6) the information you have marked, except for the information we have marked for release, and the information we have marked under section 552.130 of the Government Code. The city must release the rest of the information in Exhibit C unless it has already done so.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, looped initial "J".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 464159

Enc: Submitted information

c: Requestor
(w/o enclosures)