



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 18, 2013

Ms. Linda Pemberton  
Paralegal  
Office of the City Attorney  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540-1329

OR2013-04455

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# 480342 (ID No. W009584).

The Killeen Police Department (the "department") received two requests from the same requestor for specified forms and a specified letter of resignation. You inform us the department has released some 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.

Initially, we note most of the submitted information, which we have marked, is not responsive to the requests for information because it does not consist of the requested forms or letter of resignation. This decision does not address the public availability of the non-responsive information, and that information need not be released in response to the present request.

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 excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. You inform us that the City of Killeen is a civil service city pursuant to 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: a file that must be maintained by the civil service director as part of the officer's civil service file, and an internal file that the police department may maintain for its own 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 department took disciplinary action against the officer under chapter 143. *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 (2000) (written reprimand is not disciplinary action for purposes of 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 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 that reasonably relates to a police officer's employment relationship with the 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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us the submitted responsive information is contained in the department's internal file pursuant to section 143.089(g). We note the information at issue pertains to a reserve police officer formerly employed by the department. Section 143.003(5) defines a police officer as "a member of a police department or other peace officer who was appointed in substantial compliance with this chapter or who is entitled to civil service status under [s]ection 143.005, 143.084, or 143.103." Local Gov't Code § 143.003(5). In response to this office's request for additional information under section 552.303(c) of the Government Code, you inform us reserve police officers employed by the department are not appointed in compliance with chapter 143, nor are they entitled to civil service status under section 143.003, 143.084, or 143.103. Thus, we find the responsive information is not subject to chapter 143 of the Local Government Code. Accordingly, this information may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

We note the responsive information includes a L-3 Declaration of Psychological and Emotional Health form required by the Texas Commission on Law Enforcement Officers

Standards and Education ("TCLEOSE"). Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which provides:

(a) [TCLEOSE] may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Thus, the department must withhold the L-3 Declaration of Psychological and Emotional Health form, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.<sup>1</sup> As no further exceptions to disclosure are raised for the remaining responsive information, the department must release it.<sup>2</sup>

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,

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<sup>1</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain information, including an L-3 declaration under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>We note the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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, appearing to read 'K. Conyer', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/dls

Ref: ID# 480342

Enc. Submitted documents

c: Requestor  
(w/o enclosures)