



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 29, 2013

Mr. Norman Ray Giles  
Counsel for the City of Santa Fe  
Chamberlain, Hrdlicka, White, Williams & Aughtry  
1200 Smith Street, Suite 1400  
Houston, Texas 77002

OR2013-18789

Dear Mr. Giles:

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# 503843.

The City of Santa Fe (the "city"), which you represent, received a request for all records relating to a named city police officer. You state the city has released some responsive information to the requestor. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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 section encompasses information protected by other statutes such as

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<sup>1</sup>Although you raise section 552.108 of the Government Code, you make no arguments to support this exception. Accordingly, we find the city has waived its claim under this exception. *See* Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

<sup>2</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

section 143.089 of the Local Government Code. We understand the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files relating to a police officer: a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. 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 of the Local Government Code. *Id.* § 143.089(a)(1)-(3).

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).<sup>3</sup> *Abbott v. City of 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 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. *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 an officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). In addition, a document relating to disciplinary action against a police officer that has been placed in the officer's personnel file as provided by section 143.089(a)(2) must be removed from the officer's file if the civil service commission finds the disciplinary action was taken without just cause or the charge of misconduct was not supported by sufficient evidence. *See id.* § 143.089(c). Information that reasonably relates to an 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. *See 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. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

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<sup>3</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. Local Gov't Code §§ 143.051-.055; *see, e.g.*, Attorney General Opinion JC-0257 (2000) (written reprimand is not disciplinary action for purposes of Local Government Code chapter 143).

You state the information at issue is maintained by the city's police department (the "department") in a confidential internal file pursuant to section 143.089(g). You state this information relates to an internal affairs investigation that did not result in disciplinary action. However, the submitted information includes a dash cam video recording that is maintained independently from the department officer's personnel file. The present request does not specifically seek information from the officer's personnel files. Instead, the requestor seeks all records relating to the named officer. Because the requestor generally asks for information about the named officer, both the officer's personnel file and the submitted dash cam video recording involving the named officer are responsive. The city may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Accordingly, we find the information that is maintained solely in the department's internal investigative file is confidential under section 143.089(g) and must be withheld under section 552.101 of the Government Code. However, the submitted dash cam video recording, which is also maintained independently of the department's internal investigative file, is not confidential under section 143.089(g) and may not be withheld under section 552.101 of the Government Code on that basis. We will therefore consider your additional arguments against disclosure with respect to the submitted dash cam video recording.

Section 552.101 of the Government Code also encompasses information made confidential by judicial decision. You generally claim the submitted information is protected from disclosure by the "executive, law enforcement, deliberative process, critical analysis and official information privileges" discussed in *Coughlin v. Lee*, 946 F.2d 1152 (5th Cir. 1991) and *Frankenhauser v. Rizzo*, 59 F.R.D. 339 (E.D. Pa. 1973). However, both *Coughlin* and *Frankenhauser* concerned evidentiary privileges as applied to discovery under the Federal Rules of Civil Procedure. See *Coughlin*, 946 F.2d at 1159, *Frankenhauser* 59 F.R.D. at 341-42. You have provided no arguments explaining how either of these cases would apply to the release of the information at issue pursuant to the Act. Therefore, we find you have not demonstrated these cases provide any basis for withholding the submitted dash cam video recording.

In summary, with the exception of the submitted dash cam video recording, the city must withhold the submitted information under section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code.<sup>4</sup> The dash cam video recording 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.

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<sup>4</sup>As we are able to make this determination, we need not address your remaining arguments against release of this information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Neal". The signature is fluid and cursive, with the first name "Tim" being more prominent than the last name "Neal".

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tch

Ref: ID# 503843

Enc. Submitted documents

c: Requestor  
(w/o enclosures)