



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 2, 2014

Mr. Richard A. McCracken
Counsel for the City of Watauga
Evans, Daniel, Moore, Evans & Lazarus
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2014-00022

Dear Mr. McCracken:

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# 509781 (Watauga Request #13-190).

The City of Watauga (the "city"), which you represent, received a request for the personnel files for three city police officers. You state you have made some information available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 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. Section 552.101 encompasses information protected by 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 maintenance of two different types of personnel files for each police officer employed by a civil service city: 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 any instance in which the department took disciplinary action against the 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. 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).

Section 143.089(g) authorizes a police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. *See id.* § 143.089(g). 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. 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 that 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 these records confidential. *See City of San Antonio*, 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (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 state Exhibits B, C, and D are held in personnel files maintained by the department under section 143.089(g). Based on your representations and our review, we conclude the city must withhold Exhibits B, C, and D under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. You also seek to withhold information within the submitted periodic evaluation in Exhibit E under section 143.089(g). As previously explained, periodic evaluations 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(g). See Local Gov't Code § 143.089(a)(2), (f); *Abbott v. Corpus Christi*, 109 S.W.3d at 122; ORD 562 at 6. Because the periodic evaluation is a part of the police officer's civil service file, we conclude you have failed to demonstrate section 143.089(g) is applicable to any portion of the periodic evaluation. Consequently, the city may not withhold the information you have highlighted in the periodic evaluation in Exhibit E under section 552.101 in conjunction with section 143.089(g).

Section 552.101 of the Government Code also encompasses the common-law informer's privilege, which Texas courts have long recognized. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. See Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988).

You assert the information you highlighted in Exhibit G includes identifying information of a confidential informant. You state release of the identity of a former confidential informant could hinder undercover investigations in the future by potential informants refusing to cooperate with the department. Upon review, we find you have demonstrated the applicability of the common-law informer's privilege to the information we marked in Exhibit G. Therefore, the city may withhold the information we marked in Exhibit G under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find you have failed to demonstrate any of the remaining information in Exhibit G consists of identifying information of an individual who made the report of a criminal violation to the department for purposes of the informer's privilege. Accordingly, we find you have failed to demonstrate the applicability of the common-law informer's privilege to the remaining information in Exhibit G. Therefore, the city may not

withhold any of the remaining information in Exhibit G under section 552.101 on the basis of the informer's privilege.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information you highlighted in pink in Exhibit F under section 552.130 of the Government Code.¹

In summary, the city must withhold Exhibits B, C, and D under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city may withhold the information we marked in Exhibit G under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the motor vehicle record information you highlighted in Exhibit F under section 552.130 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.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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

Ref: ID# 509781

Enc. Submitted documents

c: Requestor
(w/o enclosures)