



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 28, 2014

Ms. Julia Gannaway  
Counsel for the City of Waxahachie  
Lynn, Ross & Gannaway, LLP  
306 West Broadway Avenue  
Fort Worth, Texas 76104

OR2014-05224

Dear Ms. Gannaway:

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# 518163.

The Waxahachie Police Department (the "department"), which you represent, received a request for a specified internal affairs investigation, information pertaining to a specified polygraph conducted as part of the specified internal affairs investigation, certain disciplinary information for department officers for a specified time period, and the requestor's client's personnel file. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Initially, we note Exhibit B consists of the final decision of a hearing examiner in a civil service hearing conducted on behalf of the city's civil service commission (the "commission"). Local Gov't Code §§ 143.010 (commission appeal procedures), .057. Section 143.011 of the Local Government Code provides that "[e]ach rule, opinion, directive, decision, or order issued by the commission must be written and constitutes a public record the commission shall retain on file." *Id.* § 143.011(c). As the hearing examiner has the same duties and powers of the commission, we find the hearing examiner's final decision is subject to section 143.011 of the Local Government Code and, thus, is a public record. *See id.* § 143.057(f); *see also Downs v. City of Fort Worth*, 692 S.W.2d 209 (Tex. App.—Fort Worth 1985, writ ref'd n.r.e.) (equating appeals to independent third party hearing examiner with appeals to civil service commission). Although you claim this information is excepted from disclosure under section 552.103 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989)*. Accordingly, the department must release Exhibit B pursuant to section 143.011 of the Local Government Code.

Next, we some of the remaining information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(1). The remaining information includes a completed report and completed investigations that are subject to section 552.022(a)(1) and must be released unless they are confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *Open Records Decision No. 542 at 4 (1990)* (statutory predecessor to section 552.103 may be waived); *see also Open Records Decision No. 665 at 2 n.5 (2000)* (discretionary exceptions generally). Therefore, the department may not withhold the information subject to section 552.022 under section 552.103. You also raise section 552.101 of the Government Code, which protects information made confidential under law. Accordingly, we will address the applicability of section 552.101 to the information that is subject to section 552.022. We will also consider your arguments under sections 552.101 and 552.103 for the remaining information that is not subject to section 552.022.

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 section 1703.306 of the Occupations Code. Section 1703.306 provides the following, in pertinent part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306(a)(1). We agree Exhibit D constitutes information acquired from a polygraph examination. However, in this instance, the requestor's client is the polygraph examinee. Thus, the department has the discretion to release the requestor's client's polygraph information pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permitted, but did not require, examination results to be disclosed to examinees). Otherwise, the department must withhold Exhibit D under section 552.101 in conjunction with section 1703.306(a).

Section 552.101 of the Government Code also encompasses section 143.089 of the Local Government Code. We understand the City of Waxahachie 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).

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>2</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

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<sup>2</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).

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.<sup>3</sup> *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).

You state Exhibits E and F are maintained in the department's internal files pursuant to section 143.089(g). We note there is not a right of access for the officer to obtain information in a section 143.089(g) file. Based upon your representation and our review, we conclude Exhibits E and F are confidential pursuant to section 143.089(g) and must be withheld under section 552.101.<sup>4</sup>

In summary, the department must release Exhibit B pursuant to section 143.011 of the Local Government Code. The department has the discretion to release Exhibit D pursuant to section 1703.306(a)(1) of the Occupations Code. The department must withhold Exhibits E and F 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.

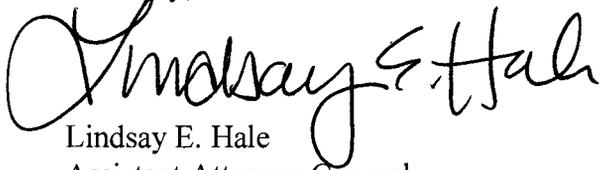
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<sup>3</sup>We note that section 143.089(g) of the Local Government Code requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure 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 that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/akg

Ref: ID# 518163

Enc. Submitted documents

c: Requestor  
(w/o enclosures)