



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2014

Mr. Brandon W. Carr
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2014-22928

Dear Mr. Carr:

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# 547887.

The City of Fort Worth (the "city") received a request for nine categories of information pertaining to a specified incident. You state the city will release some of the requested information with the redaction of the originating telephone number and address of a 9-1-1 caller pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2011-15641 (2011) and 2011-15956 (2011), motor vehicle record information pursuant to section 552.130(c) of the Government Code, and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.119 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

¹Open Records Letter Nos. 2011-15641 and 2011-15956 are previous determinations issued to the city authorizing the city to withhold the originating telephone numbers and addresses, respectively, of 9-1-1 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code without requesting a decision from this office. See Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

Code § 552.101. This section encompasses information protected by other statutes such as 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 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).² *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).

²Chapter 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).

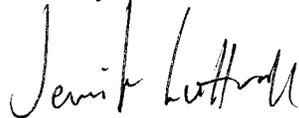
You state Exhibits C-1 and C-2 relate to a complaint that did not result in disciplinary action, and they are contained within the internal files maintained under section 143.089(g) of the Local Government Code by the city's police department (the "department"). Based on your representation and our review, we agree Exhibit C-1 is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.³ However, we note Exhibit C-2 consists of an audio recording of a 9-1-1 call that is also maintained independently from the officers' personnel files. In this instance, the requestor has specifically requested the submitted 9-1-1 audio recording, which is maintained for law enforcement purposes separate and apart from any internal files. The city may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Therefore, we find Exhibit C-2 is not confidential under section 143.089(g) of the Local Government Code and may not be withheld under section 552.101 of the Government Code on that basis.

In summary, the city must withhold Exhibit C-1 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

³As our ruling on Exhibit C-1 is dispositive, we need not address your remaining argument against its disclosure.

Ref: ID# 547887

Enc. Submitted documents

c: Requestor
(w/o enclosures)