



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2016

Mr. Guillermo Trevino
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-18556

Dear Mr. Trevino:

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# 622696 (PIR No. W052148).

The City of Fort Worth (the "city") received a request for the requestor's personnel and civil service files. You state you have released some information to the requestor. 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 some of the submitted information, which we have marked, is not responsive to the request for information because it does not relate to the requestor's personnel or civil service files. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information in response to this 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 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; *see* Attorney General Opinion JC-0257 (2000) (written reprimand is not disciplinary action for purposes of Local Gov't Code 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 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. § 143.089(g). 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).

You inform us the responsive information is maintained in the internal files of the city’s police department pursuant to section 143.089(g). You also state some of the internal affairs investigations at issue involve allegations of misconduct against an officer that were determined to be either unfounded or did not result in discipline under chapter 143. Based on these representations and our review, we agree portions of the responsive information are confidential pursuant to section 143.089(g). Accordingly, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

We note the remaining internal affairs investigation resulted in disciplinary action taken against the individual at issue. You assert the disciplinary action was overturned by an arbitrator. Therefore, we understand you to assert this information is properly maintained in the city’s police department’s internal files as authorized by section 143.089(g). We note the information at issue indicates the officer at issue was reinstated to his position. We further note, however, the information at issue reflects that, although the original disciplinary action was rescinded by agreement, the officer at issue accepted an alternative disciplinary action. Accordingly, we find this information relates to misconduct that resulted in disciplinary action against the named officer. An officer’s civil service file must contain documents relating to any misconduct in those cases where the police department took disciplinary action against the officer. *See* Local Gov’t Code § 143.089(a)(2); *see also id.* §§ 143.051-.052 (suspension and uncompensated duty are “disciplinary action[s]” for purposes of section 143.089(a)(2)). Consequently, the information relating to the alternative disciplinary action must be placed in the officer’s civil service file under section 143.089(a). Because the information at issue relates to misconduct that resulted in disciplinary action against the requestor, this information must be maintained in the civil service file pursuant to section 143.089(a)(2), and it may not be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

Section 143.089(e) grants a right of access to a police officer for “any letter, memorandum, or document placed in the person’s personnel file.” *See id.* § 143.089(e). This office has

interpreted this provision to grant a police officer an affirmative right of access to the information in his or her personnel file maintained under section 143.089(a). *See* Open Records Decision No. 650 at 2 n.2 (1996). In this instance, because the requestor is the officer, he generally has a statutory right of access to information in his section 143.089(a) file.

We note section 261.201 of the Family Code is applicable to a portion of the information at issue. Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Portions of the information at issue relate to an investigation of alleged or suspected child abuse or neglect conducted by the city's police department. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the city has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Thus, the information within the internal affairs investigation, which we have marked, is confidential pursuant to section 261.201(a) of the Family Code, and the city must generally withhold this information pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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.¹ *See* Gov't Code § 552.130. We note the requestor has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the city must generally withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In this instance, because there is a conflict between the requestor's right of access under section 143.089(e) of the Local Government Code and the confidentiality of the information we have marked under section 261.201 of the Family Code and section 552.130 of the Government Code, we must determine which statute governs access to these records. Where information falls within both a general and a specific statutory provision, the specific statutory provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is the general provision prevail. *See* Gov't Code § 311.026; *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). In this instance, although section 143.089(e) generally allows a police officer a right of access to his own civil service file, section 261.201 of the Family Code and section 552.130 of the Government Code protect information related to investigations of alleged or suspected child abuse or neglect and motor vehicle record information, respectively. Thus, we find the confidentiality provided by these sections prevails over the requestor's general right of access under section 143.089(e) in this matter. Accordingly, we conclude that, notwithstanding the applicability of section 143.089(e), the city must withhold the information we have marked pursuant to section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code and the information we have marked under section 552.130 of the Government Code.

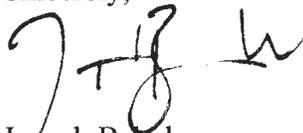
In summary, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. In releasing the remaining responsive information to which the requestor has a right of access under section 143.089(e) of the Local Government Code, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, as well as the motor vehicle record information we have marked under section 552.130 of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480(1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read 'JTB' with a flourish at the end.

Joseph Beninke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 622696

Enc. Submitted documents

c: Requestor
(w/o enclosures)