



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 18, 2016

Mr. James Kopp  
Assistant City Attorney  
Office of the City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2016-23325

Dear Mr. Kopp:

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# 630781 (ORR Nos. W132361 and W132362).

The City of San Antonio (the "city") received a request for information regarding a named police officer's involvement in automobile accidents during his career and any resulting disciplinary action.<sup>1</sup> You state the city is releasing some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the exception 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

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<sup>1</sup>We note in a letter dated August 22, 2016, the city states it wishes to withdraw its request for a ruling in regard to the first request for information because the responsive records will be released to the requestor. This ruling does not address the public availability of information the city no longer seeks to withhold.

<sup>2</sup>We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code makes information confidential and thus can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

§ 552.101. This section encompasses section 143.089 of the Local Government Code. The city states it is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: 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). 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 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 are subject to release under the Act. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

The city states the submitted information is maintained in the internal files of the city's police department pursuant to subsection 143.089(g). Based on these representations, we conclude the submitted information is generally confidential under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, the submitted information includes a finding of misconduct that resulted in disciplinary suspension of the officer at issue. While this information may be kept in the internal file maintained under section 143.089(g), it must also be kept in the civil service personnel file maintained under section 143.089(a). *See* Local Gov't Code § 143.089(a)(3). The request for information was received by the city, which has access to the files maintained under both section 143.089(a) and section 143.089(g). Therefore, the request encompasses both of these files. Because the city may not withhold information maintained in the civil service files of the officers at issue under section 552.101 on the basis of section 143.089(g), the city must release the finding of misconduct that resulted in a disciplinary suspension, which we have marked, unless it has already done so. *See id.* § 143.089(f); ORD 562 at 6. The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

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<sup>3</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055.

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](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,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

Ref: ID# 630781

Enc. Submitted documents

c: Requestor  
(w/o enclosures)