



February 13, 2015

Ms. L. Carolyn Nivens
For the City of League City
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2015-02977

Dear Ms. Nivens:

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# 553654 (City Ref. No. 14-589).

The City of League City (the "city"), which you represent, received a request for the personnel file and "G" file for a named former police officer. You state you will release 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.

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 made confidential by other statutes, such as section 143.089 of the Local Government Code. We understand 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 for police officers in a civil service city: a civil service file the civil service director is required to maintain and an internal file the police department may maintain for its own use. *See* Local Gov't Code § 143.089(a), (g). Section 143.089(a) provides the officer's civil service file must contain:

- (1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;
- (2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and
- (3) the periodic evaluation of the fire fighter or police officer by a supervisor.

Id. § 143.089(a). For purposes of section 143.089(a)(2), 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 (written reprimand is not disciplinary action for purposes of chapter 143 of the Local Government Code).

In cases in which a police department investigates an 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 officer's civil service file maintained under section 143.089(a). *See 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 an 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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the submitted information consists of information contained within the city's police department's internal file on the officer at issue pursuant to section 143.089(g). We note portions of the submitted information, which we have marked, consist of commendations of the named officer. As previously noted, a police officer's civil service file must contain commendations bestowed by his employing department and a member of the public. *See* Local Gov't Code § 143.089(a)(1). Accordingly, while the information we have marked may be kept in the section 143.089(g) file, it must also be placed in the officer's section 143.089(a) file. In this instance, the request was received by the city, which has access to the files maintained under subsections 143.089(a) and 143.089(g); therefore, the request encompasses both of these files. Accordingly, the city may not withhold the information we have marked under section 552.101 in conjunction with section 143.089(g).

However, the city must withhold the remaining information under section 552.101 in conjunction with section 143.089(g).

We note the requestor has submitted an authorization for release form signed by the officer. Section 143.089(e) grants a right of access to an officer for "any letter, memorandum, or document placed in the person's personnel file." *Id.* § 143.089(e). Thus, the requestor has a right of access to the named officer's section 143.089(a) file. Accordingly, the requestor has a right of access to the information we have marked pursuant to section 143.089(e). Although you seek to withhold portions of the information we marked under section 552.101 in conjunction with common-law privacy, we note a specific statutory right of access prevails over the common law. *See CenterPoint Energy Houston Elec. LLC v. Harris County Toll Road*, 436 F.3d 541, 544 (5th Cir. 2006) (common-law controls only where there is no conflicting or controlling statutory law).

You also claim section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code for portions of the information we marked. Section 552.101 of the Government Code also encompasses section 58.007, which provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). We note section 58.007(c) is only applicable to law enforcement records and files of a child. The information we have marked consists of personnel records. Upon review, we find the information we have marked is purely administrative in nature and does not constitute a law enforcement record for purposes of section 58.007. As such, the

information you have marked within the information at issue may not be withheld under section 552.101 in conjunction with section 58.007(c).

In summary, the city must release the information we have marked under section 143.089(e) of the Local Government Code. The remaining information must be withheld 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.

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,



Daniel Olds
Assistant Attorney General
Open Records Division

DO/akg

Ref: ID# 553654

Enc. Submitted documents

c: Requestor
(w/o enclosures)