



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 27, 2016

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2016-09538

Dear Ms. Pemberton:

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# 607627 (ID# W018498).

The Killeen Police Department and the Killeen City Attorney's Office (collectively, the "city") each received a request from the same requestor for information related to a specified car accident and information related to a named officer involved in the accident. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 and of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note Attachment D is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(5). Attachment D consists of completed estimates subject to section 552.022(a)(5) of the Government Code. Although you raise section 552.103 of the Government Code, this section is a discretionary exception that protects a governmental body's interests 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 Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the information subject to section 552.022(a)(5) under section 552.103. However, we note portions of the information in Attachment D subject to section 552.022 are subject to section 552.130, which makes information confidential under the Act.¹ Thus, we will address the applicability of this exception to the information at issue. Furthermore, we will address your argument under section 552.101 for the remaining information not subject to section 552.022(a)(5).

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 section 143.089 of the Local Government Code, which contemplates two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. *See* 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)-(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 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

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

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 city is a civil service city under chapter 143 of the Local Government Code. You state Attachment C is contained in the city police department's internal file pursuant to section 143.089(g). Based on the city's representations and our review, we agree Attachment C is confidential pursuant to section 143.089(g) of the Local Government Code. Accordingly, the city must withhold Attachment C under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

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. *See* Gov't Code § 552.130(a). The city must withhold the motor vehicle record information we have marked in Attachment D under section 552.130 of the Government Code.

In summary, the city must withhold Attachment C under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Under section 552.022 of the Government Code, the city must release Attachment D. However, in releasing Attachment D, the city must withhold the information we have marked under section 552.130 of the 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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/bhf

Ref: ID# 607627

Enc. Submitted documents

c: Requestor
(w/o enclosures)