



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 22, 2016

Mr. Brandon S. Shelby  
City Attorney  
City of Sherman  
P.O. Box 1106  
Sherman, Texas 75091

OR2016-28333

Dear Mr. Shelby:

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# 638980 (PIR OR-2570/SPD#175).

The City of Sherman (the "city") received a request for the internal affairs file of 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. 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 state the submitted information is contained within the city's police department's internal files maintained pursuant to section 143.089(g) of the Local Government Code. Based on your representation and our review, we find the submitted information is confidential under section 143.089(g) of the Local Government Code and must generally be withheld from disclosure under section 552.101 of the Government Code.

However, the submitted information contains an F-5 report relating to the resignation of the requestor before September 1, 2005. Employment termination reports regarding resignations or terminations that occurred before September 1, 2005, are governed by former section 1701.452, of the Occupations Code, which was continued in effect for that purpose.<sup>1</sup> Former section 1701.452 provided:

(a) The head of a law enforcement agency shall submit a report to [the Texas Commission on Law Enforcement ("TCOLE")] on a form prescribed by [TCOLE] regarding a person licensed under this chapter who resigns from the employment of the law enforcement agency or whose appointment with the law enforcement agency is terminated. The agency head shall include in the report an explanation of the circumstances under which the person resigned or was terminated.

(b) The head of the law enforcement agency from which a person resigns or is terminated shall provide to the person a copy of the report. The person may submit a written statement to [TCOLE] to contest or explain any matter contained in the report.

Act of May 17, 1999, 76th Leg., R.S., ch. 388, § 1, 1999 Tex. Gen. Laws 1431, 2226 *amended by* Act of May 30, 2005, 79th Leg., R.S., ch. 1298, § 2, 2005 Tex. Gen. Laws 4092, 4092. The report at issue pertains to the resignation of the requestor from the city's police department on February 15, 2000. Accordingly, we find the requestor has a right of access to the submitted F-5 report pursuant to former section 1701.452(b) of the Occupations Code.

Although the submitted information is confidential under section 143.089(g) of the Local Government Code, former section 1701.452(b) of the Occupations Code provides the requestor a right of access to the submitted F-5 report. Therefore, there is a conflict between the confidentiality provision of section 143.089(g) and the access provision of section 1701.452(b). Where information falls within both a general and a specific statutory

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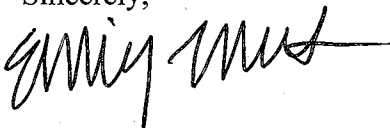
<sup>1</sup>Act of May 30, 2005, 79th Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4092, 4092.

provision, the specific provision prevails over the general statute. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *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); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Although section 143.089(g) of the Local Government Code applies generally to all records in a department personnel file, former section 1701.452(b) of the Occupations Code applies specifically to reports of resignation or termination. Thus, we find former section 1701.452(b) of the Occupations Code is more specific than the confidentiality provision of section 143.089(g). Therefore, notwithstanding section 143.089(g) of the Local Government Code, we conclude the city must release the F-5 report to the requestor. The city must withhold the remaining information under section 143.089(g) of the Local Government Code in conjunction with section 552.101 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](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,



Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/akg

Ref: ID# 638980

Enc. Submitted documents

c: Requestor  
(w/o enclosures)