



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 20, 2017

Mr. Nathan T. Brown
Assistant City Attorney
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

OR2017-01397

Dear Mr. Brown:

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# 642742 (City File No. 2016-594).

The City of New Braunfels (the "city") received a request for all disciplinary records included in the civil service personnel file of a named officer. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions 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 excepts from disclosure information deemed confidential by statute, such as 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.¹ 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

¹You inform us the city adopted chapter 143 in October 2011, thereby implementing civil service.

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. 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 police 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).

However, a document relating to a police officer's alleged misconduct may not be placed in his civil service file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the police department and that is 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. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You informs us the submitted information is maintained in the city's police department's (the "department") internal file pursuant to section 143.089(g). We note the documents at issue were compiled and placed in the officer's personnel file prior to the city's adoption of chapter 143. Section 143.005 of the Local Government Code states, in pertinent part:

(a) Each fire fighter or police officer serving in a municipality that adopts this chapter and who has been in the service of the municipality for more than six months at the time this chapter is adopted and who is entitled to civil service classification has the status of a civil service employee and is not required to take a competitive examination to remain in the position the person occupies at the time of the adoption.

Local Gov't Code § 143.005(a). Therefore, officers who have been employed for more than six months when the city adopts chapter 143 are civil service employees and enjoy the full protections of the chapter. The submitted documents show the officer to whom these records pertain was employed by the department for at least six months prior to the city's adoption of chapter 143. Therefore, once the city adopted chapter 143, sections 143.089(a) and 143.089(g) apply to the officer's personnel files.

You state the information at issue was maintained in the officer's personnel file when the city adopted chapter 143, and is now maintained in the department's internal file. You assert the submitted information reasonably relates to the officer's employment relationship with the department and should be withheld. However, the submitted information relates to findings of misconduct that resulted in disciplinary action against 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 officer at issue under section 552.101 on the basis of section 143.089(g), except for the information discussed below, the city must release the submitted information. *See id.* § 143.089(f); ORD 562 at 6.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Upon review, we find the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

In summary, the city must withhold the information we marked under section 552.117(a)(2) of the Government Code. The city must release the remaining information.

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 'Emily Kunst', with a long horizontal stroke extending to the right.

Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 642742

Enc. Submitted documents

c: Requestor
(w/o enclosures)