



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 30, 2017

Mr. Jose Hernandez  
Records Supervisor  
Edinburg Police Department  
1702 South Closner Boulevard  
Edinburg, Texas 78539

OR2017-02016

Dear Mr. Hernandez:

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# 649383 (ORR# 96368).

The Edinburg Police Department (the "department") received a request for information related to case number 16-44824. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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. Section 552.101 encompasses information protected by section 143.089 of the Local Government Code. You state the City of Edinburg 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 some of the submitted information, which you have marked, is contained within the 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 information at issue is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to an active criminal investigation or prosecution. Based on your representation, we conclude the release of the information you have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information you marked.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, a detailed description of the offense. *See* ORD 127 at 3-4. In this instance, you have marked the entire narrative portion of the submitted incident report as information you seek to withhold under section 552.108. The remaining information at issue does not contain information sufficient to satisfy the requirement that a "detailed description of the offense" be released as basic information. *See id.* Accordingly, we determine the department must release a sufficient portion of the narrative to encompass a detailed description of the offense. Thus, with the exception of the basic information, the department may withhold the information you marked under section 552.108(a)(1) of the 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. Accordingly, the department must withhold the motor vehicle record information you have marked, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. With the exception of the basic information, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. The department must withhold the marked motor vehicle record information under section 552.130 of the Government Code. The department 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 649383

Enc. Submitted documents

c: Requestor  
(w/o enclosures)