



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 7, 2017

Mr. Terrance M. Garmon
Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR2016-02784

Dear Mr. Garmon:

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# 644884 (LegalDesk #KBW-332426).

The Tyler Police Department (the "department") received a request for information related to the investigation and termination of a former department officer, including information relating to a specified incident. You state the department will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code. Additionally, you state you have notified the named former officer of his right to submit comments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). 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." *Id.* § 552.101. Section 552.101 of the Government Code encompasses section 143.089 of the Local Government Code. You inform us the City of Tyler (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. 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 (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You state the information you have indicated is contained within the department’s internal files maintained pursuant to section 143.089(g) of the Local Government Code. We note the information consists of documents relating to misconduct that resulted in disciplinary action against the named officer. As described above, periodic evaluations, commendations, and documents in an officer’s internal department file that relate to any misconduct in cases in which the department took disciplinary action against the officer must be included in the officer’s civil service file. *See* Local Gov't Code § 143.089(a)(2). Thus, the information pertaining to the disciplinary action must be placed in the officer’s civil service file, unless the department has already done so.¹ However, because the department received the request and maintains the information at issue in the section 143.089(g) file for the named officer, we find the information at issue is generally confidential under section 143.089(g) of the Local Government Code.

We note the submitted information includes photographs which may be maintained by the department independently of any officer’s personnel file. The request for information does not specifically seek information from an officer’s personnel file. Instead, the requestor seeks information pertaining to the investigation and termination of the named former officer, along with information related to a specified incident. Because the requestor generally asks for information about the specified incident involving the named former officer, both the officer’s personnel file and any copies of investigatory materials the department maintains for law enforcement purposes are responsive. The department may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Thus, to the extent the submitted photographs are maintained solely in an officer’s department file, they are confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code. However, to the extent this information is maintained outside an officer’s department file, the department may not withhold this information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. In either case, we find the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

To the extent the submitted photographs are maintained outside an officer’s department file, you claim this information is subject to section 552.1175 of the Government Code. Section 552.1175 of the Government Code protects the home address, home telephone

¹Section 143.089(g) requires a police or fire department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director’s designee.

number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." *Id.* § 552.1175(a)(1). Upon review, we find the photographs at issue are not subject to section 552.1175, and they may not be withheld on that basis.

In summary, to the extent the submitted photographs are maintained solely in an officer's department file, they are confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code; otherwise they must be released. The department must withhold the remaining information 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/sdk

Ref: ID# 644884

Enc. Submitted documents

c: Requestor
(w/o enclosures)