



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 30, 2017

Mr. Alan T Ozuna  
Counsel for the City of Pharr  
Denton, Navarro, Rocha, Bernal, Hyde & Zech, PC  
701 East Harrison, Suite 100  
Harlingen, Texas 78550-9165

OR2017-06664

Dear Mr. Ozuna:

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# 651268 (Reference Nos. PIR-2017-002, PIR-2017-003).

The City of Pharr (the "city"), which you represent, received two requests from the same requestor for records related to the placement of city police department (the "department") employees on paid or unpaid administrative leave since a specified date and any E-1 forms submitted by the department to the Texas Commission on Law Enforcement ("TCOLE") since a specified date. 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.

Initially, we note the submitted information contains a peace officer's TCOLE identification number. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database and may be used as an access device number on the TCOLE website. Accordingly, we find the officer's TCOLE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act and need not be released to the requestor.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes 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. 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)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143. *See* Attorney General Opinion JC-0257 (2000). 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 in conjunction with section 143.089. *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 Exhibit B is maintained in the internal files of the department pursuant to section 143.089(g). You state the officers at issue did not receive disciplinary action as a result of the investigations. Based on your representations and our review, we find Exhibit B is confidential under section 143.089(g). Thus, the city must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Section 552.101 also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to TCOLE under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a TCOLE member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. Exhibit C consists of an E-1 form (“Report of Criminal Charges”). We note you seek to withhold this form under section 1701.454. This section is applicable only to records submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. *See id.* § 1701.451, *et seq.*; *see also* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). You have not demonstrated the E-1 form was submitted to TCOLE under subchapter J of chapter 1701. We therefore conclude the city may not withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Thus, the city must withhold the information we marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer’s home address and telephone number, social security number, emergency contact information, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. 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. Accordingly, the city must withhold the information we marked under section 552.117(a)(2) 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. Thus, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the TCOLE identification number is not subject to the Act and need not be released. The city must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must withhold the information we marked under section 552.102(a) of the Government Code. The city must withhold the information we marked under section 552.117(a)(2) of the Government Code. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The remaining information that is subject to the Act must be released.

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 Buchanan  
Assistant Attorney General  
Open Records Division

EB/nmd

Ref: ID# 651268

Enc. Submitted documents

c: Requestor  
(w/o enclosures)