



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2017

Ms. Rebecca S. Hayward
Counsel for the City of San Juan
Denton Navarro Rocha Bernal Hyde & Zech, P.C.
701 East Harrison, Suite 100
Harlingen, Texas 78550-9165

OR2017-06672

Dear Ms. Hayward:

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# 651640.

The City of San Juan (the "city"), which you represent, received two requests from the same requestor for information pertaining to a specified arbitration hearing involving a named police officer. 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 representative sample of information.¹

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 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

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 submitted information relates to the specified arbitration hearing which pertains to an investigation into allegations of misconduct of a police officer of the city’s police department (the “department”). You explain the arbitrator found there was insufficient evidence to support the discipline. As a result, you state “all documents or information related to the alleged misconduct or disciplinary action was removed from the police officer’s civil service file pursuant to [section] 143.089(b)-(c).” We understand you to assert the information at issue is now maintained in the department’s internal personnel file pursuant to section 143.089(g). However, we note the submitted information includes the final decision of the hearing examiner regarding the appeal by the officer at issue of the disciplinary action. Local Gov’t Code §§ 143.010 (commission appeal procedures), .057. Section 143.011 of the Local Government Code provides that “[e]ach rule, opinion, directive, decision, or order issued by the commission must be written and constitutes a public record the commission shall retain on file.” *Id.* § 143.011(c). As the hearing examiner has the same duties and powers of the commission, we find the hearing examiner’s final decision is subject to section 143.011 of the Local Government Code and, thus, is a public record. *See id.* §§ 143.011, .057(f); *see also Downs v. City of Fort Worth*, 692 S.W.2d 209 (Tex. App.—Fort Worth 1985, writ ref’d n.r.e.) (equating appeals to independent third party hearing examiner with appeals to civil service commission); Attorney General Letter Opinion No. 96-018 (1996) (finding hearing examiner appeals must be held in public like commission proceedings because pursuant to section 143.057 hearing examiner has same duties and powers as commission). Although you claim the information at issue is confidential under section 143.089(g) of the Local Government Code, we find section 143.011 expressly makes appeal decisions issued by the commission public, and section 143.057 assigns the same commission duties to a hearing examiner. Thus, section 143.011 specifically controls the hearing examiner’s appeal decision at issue in this ruling, not section 143.089(g). Therefore, the city must release the submitted decision of the hearing examiner, which we have marked, under section 143.011 of the Local Government Code.

With respect to the remaining information, based on your representation and our review, we find the remaining information is generally confidential under section 143.089(g) of the Local Government Code. However, we note the remaining information consists of transcripts and exhibit indexes from a public civil service hearing conducted by a hearing examiner. *See* Local Gov’t Code §§ 143.010(c), .057(f); *see also Downs*, 692 S.W.2d 209. Section 551.022 of the Open Meetings Act, chapter 551 of the Government Code, expressly

provides the “minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body’s chief administrative officer or the officer’s designee.” Gov’t Code § 551.022. Accordingly, the submitted transcripts and exhibit indexes are public records subject to section 551.022 of the Government Code.

Thus, there is a conflict of laws between section 143.089(g) of the Local Government Code and section 551.022 of the Government Code. Where information falls within both a general and a specific statutory provision, the specific statutory provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail. *See id.* § 311.026; *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). In this instance, although section 143.089(g) generally applies to all records in a department personnel file, section 551.022 specifically applies to the minutes and tape recordings of an open meeting. Therefore, we find section 551.022 is more specific than, and prevails over, section 143.089(g). Accordingly, the remaining information must be released.

In summary, the city must release the information we marked pursuant to section 143.011 of the Local Government Code. The city must release the remaining information pursuant to section 551.022 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, 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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/sb

Ref: ID# 651460

Enc. Submitted documents

c: Requestor
(w/o enclosures)