



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 13, 2017

Mr. Alan T. Ozuna  
Counsel for City of Pharr  
Denton, Navarro, Rocha, Eternal, Hyde, & Zech, P.C.  
701 East Harrison, Suite 100  
Harlingen, Texas 78550

OR2017-20982

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# 675670 (ORR# R000028-0626717, R000029-062717).

The City of Pharr (the "city"), which you represent, received two requests from different requestors for the personnel file of a named fire fighter. The city claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the city only submitted law enforcement records pertaining to a particular arrest and a related notice of suspension, but no other portion of the requested personnel file of the named employee. We assume, to the extent any additional responsive information existed when the city received the request for information, the city has released it. If not, then the city must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

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 encompasses section 143.089 of the Local Government Code. We understand the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a fire fighter's civil service file that the civil service director is required to maintain, and an internal file that

the department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a fire department investigates a fire fighter's misconduct and takes disciplinary action against the fire fighter, 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 fire fighter's civil service file maintained under section 143.089(a). *Abbott v. City of 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 in possession of the department because of its investigation into a fire fighter's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. Such records are subject to release under the Act. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to a fire fighter's alleged misconduct may not be placed in the fire fighter's civil service personnel 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 fire fighter's employment relationship with the department and that is maintained in a department 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).

The city informs us the submitted information pertains allegations of misconduct against the named fire fighter that have not resulted in disciplinary action against the fire fighter at issue. However, as noted in part above, the submitted documents reveal the named fire fighter was temporarily suspended without pay under section 143.056(a) of the Local Government Code. *See* Local Gov't Code § 143.056(a) (providing for the temporary suspension of a fire fighter who is officially charged with the commission of a Class A or B misdemeanor). Accordingly, all information relating to this disciplinary action must also be maintained in the fire fighter's civil service file under section 143.089(a). *See id.* § 143.089(a)(2); *see also* Attorney General Opinion JC-0257. In this instance, the request was received by the city, which has access to the files maintained under both subsections 143.089(a) and 143.089(g). Therefore, the request encompasses both of these files. Thus, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government 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[.]”<sup>1</sup> Gov’t Code § 552.102(a). The Texas Supreme Court has 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). The city must withhold the date of birth of the named fire fighter under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code may be applicable to some of the submitted information. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Therefore, the city may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Such information may not be withheld for individuals who did not make a timely election. We have marked information that the city must withhold if section 552.117(a)(1) applies.

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*. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

To conclude, the city must withhold the following: (1) the date of birth of the named fire fighter under section 552.102(a) of the Government Code; (2) the information we have marked under section 552.117(a)(1) if the fire fighter at issue timely elected to withhold that information; and (3) the information we have marked under section 552.130 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.

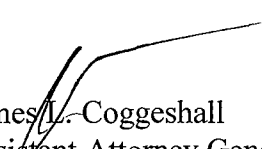
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987)*.

[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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bw

Ref: ID# 675670

Enc. Submitted documents

c: Requestor  
(w/o enclosures)