



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 24, 2019

Mr. Jeremy R. Page  
Counsel for The City of Lancaster  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2019-10904

Dear Mr. Page:

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# 761670 (City ID# W10943).

The City of Lancaster (the "city"), which you represent, received a request for several categories of information pertaining to the employment of a named individual. You state the city will redact certain information pursuant to sections 552.130(c) and 552.147(b) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 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. 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 contemplates two

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b)

different types of personnel files relating to a firefighter: a firefighter's civil service file that the civil service director is required to maintain, and an internal file that the fire department may maintain for its own use. Local Gov't Code § 143.089(a), (g). The firefighter's civil service file must contain certain specified items, including commendations, periodic evaluations by the firefighter's supervisor, and documents relating to any misconduct in which the department took disciplinary action against the firefighter under chapter 143 of the Local Government Code. *Id.* § 143.089(a).

In cases in which a fire department investigates a firefighter's misconduct and takes disciplinary action against an firefighter, 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 firefighter's civil service file maintained under section 143.089(a).<sup>2</sup> *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 fire department because of its investigation into a firefighter's misconduct, and the fire 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).

However, a document relating to an firefighter's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). In addition, a document relating to disciplinary action against a firefighter that has been placed in the firefighter's personnel file as provided by section 143.089(a)(2) must be removed from the firefighter's file if the civil service commission finds the disciplinary action was taken without just cause or the charge of misconduct was not supported by sufficient evidence. *See id.* § 143.089(c). Information that reasonably relates to an firefighter's employment relationship with the fire department and that is maintained in a fire department's internal file pursuant to section 143.089(g) is confidential and must not be released. *See 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. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

We understand the information you indicated is maintained in the city's fire department's internal files pursuant to section 143.089(g). We note some of the information at issue pertains to allegations of misconduct against a firefighter that ultimately resulted in

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<sup>2</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. Local Gov't Code §§ 143.051-.055; *see, e.g.*, Attorney General Opinion JC-0257 (2000) (written reprimand is not disciplinary action for purposes of Local Government Code chapter 143).

suspensions of the firefighter at issue. Accordingly, this information relates to misconduct that resulted in disciplinary action pursuant to section 143.089. Thus, while this information may be kept in the internal file maintained under subsection 143.089(g), it must also be kept in the civil service personnel file maintained under subsection 143.089(a). *See* Local Gov't Code § 143.089(a)(2). 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. Accordingly, the city may not withhold the information pertaining to the incidents that resulted in suspensions of the firefighter, which we have marked, under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, we find the remaining information at issue is confidential; accordingly, except for the information we have marked for release, the city must withhold the information you have indicated under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.<sup>3</sup>

After reviewing your arguments, we have determined no novel or complex issue exists in the remaining information. Thus, we address your remaining claims in a summary ruling.

The city must withhold the employee date of birth in the remaining information under section 552.102(a) of the Government Code. The city must withhold the W-4 forms we marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. To the extent the employee at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the public employee personal information we marked under section 552.117(a)(1) of the Government Code; however, the city may only withhold any cellular telephone numbers if the cellular telephone services are not paid for by a governmental body.<sup>4</sup> The city must withhold the information we marked, and all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the additional motor vehicle information we marked under section 552.130 of the Government Code. The city must withhold the access device numbers we marked under section 552.136 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.

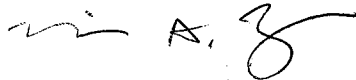
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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read "N. A. Ybarra". The signature is fluid and cursive, with a large, stylized "Y" at the end.

Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NY/mo

Ref: ID# 761670

Enc. Submitted documents

c: Requestor  
(w/o enclosures)