



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 9, 2019

Mr. Thomas L. McMillian  
Assistant City Attorney  
City of Amarillo  
200 Southeast Third Avenue  
Amarillo, Texas 79101-1514

OR2019-28283

Dear Mr. McMillian:

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# 790469 (ORR# 19-1732).

The Amarillo Police Department (the "department") received a request for information pertaining to a named individual. The department claims the submitted 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 department only submitted a portion of the requested information pertaining to the named individual. We assume, to the extent any additional responsive information existed when the department received the request for information, the department has released it. If not, then the department 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. The department states the City of Amarillo is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). 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).<sup>1</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 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 are subject to release under the Act. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

The department informs us the submitted information pertains to an investigation that did not result in disciplinary action against the officer at issue. The department states this information is maintained in its internal files concerning the named officer. We note some of the submitted information pertains to findings of misconduct that resulted in disciplinary suspension of the officer at issue. Accordingly, 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. However, we agree the remaining information is generally confidential under section 143.089(g) of the Local Government Code.

Section 1701.451 of the Occupations Code provides, in part, the following:

(a) Before a law enforcement agency may hire a person licensed under this chapter, the agency head or the agency head's designee must:

(1) make a request to the [Texas Commission on Law Enforcement (“TCOLE”)] for any employment termination report regarding the person that is maintained by [TCOLE] under this subchapter; and

(2) submit to [TCOLE] on the form prescribed by [TCOLE] confirmation that the agency:

(A) conducted in the manner prescribed by [TCOLE] a criminal background check regarding the person; [and]

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<sup>1</sup> Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055.

(B) obtained the person's written consent on a form prescribed by [TCOLE] for the agency to view the person's employment records[.]

...

(a-1) A law enforcement agency that obtains a consent form described by Subsection (a)(2)(B) shall make the person's employment records available to a hiring law enforcement agency upon request.

Occ. Code § 1701.451(a), (a-1).<sup>2</sup> The requestor is with the West Texas A&M University Police Department and he states he seeks the requested information as part of an employment background investigation for the named individual. Further, he has provided a copy of the named individual's written consent to view his employment records. Thus, pursuant to section 1701.451(a-1), the requestor has a right of access to the submitted information. Therefore, we must harmonize the right of access provided by section 1701.451(a-1) of the Occupations Code with the confidentiality provided under section 143.089(g) of the Local Government Code. We are guided by the principle of statutory construction that, where possible, we are to construe statutes so as to harmonize them with other relevant laws and not to find conflict. *In re United Servs. Auto. Ass'n* 307 S.W.3d 299, 311 (Tex. 2010). Section 143.089(g) generally makes all records in an officer's departmental personnel file confidential. *See* Local Gov't Code § 143.089, *added by* Act of March 1, 1989, 71st Leg., ch. 1, § 25(c) (effective Aug. 28, 1989), *amended by* Act of May 29, 1989, 71st Leg., ch. 1248, § 84 (effective Sept. 1, 1989). However, when the Legislature subsequently enacted section 1701.451, it intended to create an exception to the confidentiality of section 143.089(g) by providing a hiring law enforcement agency with a right of access to an officer's personnel file. Act of June 15, 2007, 80th Leg., ch.1068, §1 (effective Sept. 1, 2007); *see also* Occ. Code § 1701.003(a) (allowing exception to chapter 143 of the Local Government Code where expressly provided in chapter 1701). Accordingly, the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code but, instead, must provide this information to the requestor pursuant to section 1701.451(a-1) of the Occupations Code. Therefore, the department must release the submitted information.<sup>3</sup>

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.

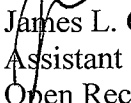
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<sup>2</sup> The Texas Commission on Law Enforcement Officer Standards and Education was renamed TCOLE by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

<sup>3</sup> Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jxd

Ref: ID# 790469

Enc. Submitted documents

c: Requestor  
(w/o enclosures)