



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 25, 2020

Mr. Thomas Royce Hansen  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102-6311

OR2020-06029

Dear Mr. Hansen:

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# 813431 (Ref. No. W094188).

The City of Fort Worth (the "city") received a request for certain personnel information pertaining to a named police officer as well as specified policies of the Fort Worth Police Department (the "department"). You state the city has released some information to the requestor. 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, you state portions of the responsive information were the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2015-08505 (2015), 2016-24064 (2016), 2017-19690 (2017), 2018-09648 (2018), 2018-14766 (2018), 2018-26729 (2018), and 2019-29244 (2019). In those rulings, we concluded, in part, the city may withhold specified portions of the department's general orders manual under section 552.108(b)(1) of the Government Code. We have no indication that the law, facts, or circumstances on which the prior rulings were based have changed. Accordingly, with respect to the responsive information that is identical to the information previously submitted and ruled on by this office, the city may continue to rely on Open Records Letter Nos. 2015-08505, 2016-24064, 2017-19690, 2018-09648, 2018-14766, 2018-26729, and 2019-29244 and withhold or release the information in

accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your argument against release of the submitted information.

Section 552.101 of the Government Code exempts 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 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 police 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 police 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 police 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. In cases in which a police department investigates a police officer’s misconduct and takes disciplinary action against a police 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 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, in relevant part:

A . . . police department may maintain a personnel file on a . . . 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 . . . 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 . . . 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 (2000) (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You state the submitted information is contained within the internal files of the department and is maintained pursuant to section 143.089(g) of the Local Government Code. You also state the information at issue pertains to concluded investigations that did not result in disciplinary action for purposes of Chapter 143. Based on your representations and our review, we find the information at issue is confidential under section 143.089(g). Accordingly, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

In summary, with respect to the responsive information that is identical to the information previously submitted and ruled on by this office, the city may continue to rely on Open Records Letter Nos. 2015-08505, 2016-24064, 2017-19690, 2018-09648, 2018-14766, 2018-26729, and 2019-29244 and withhold or release the information in accordance with those rulings. The city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local 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 <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,

A handwritten signature in black ink, appearing to read "Blake Brennan", written in a cursive style.

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/rm

Ref: ID# 813431

Enc. Submitted documents

c: Requestor  
(w/o enclosures)