



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 23, 2020

Mr. Thomas McMillian  
Assistant City Attorney  
City of Amarillo  
200 Southeast Third Avenue, Fourth Floor  
Amarillo, Texas 79101

OR2020-29355

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# 855032 (Ref. No. 20-2570).

The Amarillo Police Department (the "department") received a request for information pertaining to a former department officer. You state the department will release some of the requested information. 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, we note the submitted information includes officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. Section 552.002(a) of the Government Code defines "public information" as the following:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand the officers' TCOLE identification numbers are unique computer-generated numbers assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Thus, we find the officers' TCOLE numbers do not constitute public information under section 552.002 of the Government Code. Therefore, the officers' TCOLE numbers are not subject to the Act and need not be released to the requestor.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses section 143.089 of the Local Government Code. You state the City of Amarillo 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 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).<sup>1</sup> *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

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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.

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.* § 143.089(g). 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 information at issue is maintained only within the department's internal files maintained pursuant to section 143.089(g) of the Local Government Code. Based on this 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, and you acknowledge, the requestor has a right of access to the information at issue pursuant to section 1701.451 of the Occupations Code. Section 1701.451 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 [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]

(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> In this instance, the requestor is a detective with the Shavano Park Police Department and seeks the requested information as part of an employment background investigation for the named officer. Further, the requestor 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 remaining 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. However, we will consider any other applicable exceptions to disclosure of the remaining information.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which pertains to L-2 Declaration of Medical Condition and L-3

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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.

Declaration of Psychological and Emotional Health forms required by TCOLE. Section 1701.306 provides the following:

(a) [TCOLE] may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCOLE]. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). Accordingly, we find the department must generally withhold the submitted L-3 declaration form under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

With respect to the remaining information, we find there is a conflict between the information that is made confidential by section 1701.306 of the Occupations Code, and the right of access afforded to the requestor pursuant to section 1701.451(a-1) of the Occupations Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute unless the general provision was enacted later and there is clear evidence that the Legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b) (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *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). While section 1701.451 generally provides a right of access to a person's employment records to a hiring law enforcement agency upon receipt of proper written consent, section 1701.306 specifically protects L-2 and L-3 forms. We therefore conclude that, notwithstanding section 1701.451, the department must withhold the submitted L-3 declaration form, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

In summary, the officers' TCOLE numbers are not subject to the Act and need not be released to the requestor. The department must withhold the submitted L-3 declaration form, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The department must release

the remaining information to this requestor pursuant to section 1701.451(a-1) of the Occupations Code.<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.

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,

Alexandra C. Burks  
Assistant Attorney General  
Open Records Division

ACB/gw

Ref: ID# 855032

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> We note the information being released in this instance is confidential with respect to the general public. *See* Occ. Code § 1701.451(a-1); Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.