



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 8, 2020

Ms. Sherry Phelps Vital  
Assistant City Attorney  
City of Port Arthur  
P.O. Box 1089  
Port Arthur, Texas 77641-1089

OR2020-30690

Dear Ms. Vital:

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# 856465 (Ref. No. 20-034).

The City of Port Arthur (the "city") received two requests from the same requestor for information pertaining to a specified incident, including information pertaining to a specified internal affairs investigation. You state the city has released some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the submitted information, which pertains to Port Arthur Police Department (the "department") incident number 2020-30543 and which you indicated, was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2020-22796 (2020). In that ruling, we determined that: the city must release certain court-filed documents pursuant to section 552.022(a)(17) of the Government Code, but, in releasing such information, must withhold certain motor vehicle record information under section 552.130 of the Government Code; and, with the exception of the basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, the city may continue to rely on Open Records Letter No. 2020-22796 as a previous determination and withhold or release the information you indicated in accordance with

that ruling.<sup>1</sup> *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 made confidential by other statutes, such as 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 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>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 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).

You state the remaining 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 a concluded investigation 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 remaining information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

In summary, the city may continue to rely on Open Records Letter No. 2020-22796 as a previous determination and withhold or release the information you indicated in accordance

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<sup>1</sup> As we are able to make this determination, we need not address your argument against disclosure of this information.

<sup>2</sup> Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055.

with that ruling. The city must withhold the remaining 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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/gw

Ref: ID# 856465

Enc. Submitted documents

c: Requestor  
(w/o enclosures)