



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2020

Mr. Neal Falgoust
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2020-31331

Dear Mr. Falgoust:

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# 858134 (ORR# C078587).

The City of Austin (the "city") received a request for information pertaining to complaints made by the requestor. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the claimed exception and reviewed the submitted representative sample of information.²

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 city states it 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

¹ The city acknowledges, and we agree, it did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301.

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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).³ *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 city contends the submitted information is confidential under section 143.089(g). The city informs us when the information was created, the city and the Austin Police Association were parties to a Meet and Confer Agreement (the “agreement”) created pursuant to chapter 143 of the Local Government Code. *See* Local Gov't Code §§ 143.301 *et seq.* Subchapter I includes section 143.307, which provides as follows:

- (a) An agreement under this subchapter supersedes a previous statute concerning wages, salaries, rates of pay, hours of work, or other terms and conditions of employment to the extent of any conflict with the statute.
- (b) An agreement under this subchapter preempts any contrary statute, executive order, local ordinance, or rule adopted by the state or a political subdivision or agent of the state, including a personnel board, a civil service commission, or a home-rule municipality.
- (c) An agreement under this subchapter may not diminish or qualify any right, benefit, or privilege of an employee under [chapter 143 of the Local Government Code] or other law unless approved by a majority vote by secret ballot of the members of the association recognized as a sole and exclusive bargaining agent.

Id. § 143.307; *see id.* § 143.302(1) (defining “association”). The city explains the agreement establishes a citizen oversight system to review complaints of alleged misconduct by officers of the city's police department (the “department”) and the system

³ Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055.

includes the Office of Police Oversight (the “OPO”). Section 8(a) of article 16 of the agreement, titled “Access to Section 143.089(g) Files,” provides as follows:

(a) Information concerning the administrative review of complaints against [police officers], including but not limited to Internal Affairs Division files and all contents thereof, are intended solely for the [d]epartment’s use pursuant to Section 143.089(g) of the Texas Local Government Code (the 143.089(g) file.). All records of the OPO’s Office that relate to individual case investigations and the [department] 143.089(g) file, although same are not [department] files or records, shall have the same statutory character in the hands of the OPO, and shall not be disclosed by any person, unless otherwise authorized by law or this [agreement]. Public access to such information is strictly governed by this [agreement] and Texas law. To the extent necessary to perform their duties, individuals involved in the Citizen Oversight process, including the OPO and Panel, are granted a right of access to the information contained within the 143.089(g) files of [police officers] to the extend authorized by this [agreement].

Agreement art. 16, § 8(a). *See generally id.* art. 16. The city states the submitted information pertains to complaints it received that did not result in disciplinary action under chapter 143 of the Local Government Code. On the basis of section 8(a) of the agreement, the city contends the submitted information is confidential under section 143.089(g) of the Local Government Code. Based on these representations and our review of the agreement and the information at issue, we agree 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jm

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Enc. Submitted documents

c: Requestor
(w/o enclosures)