



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2022

Sgt. Mirabelle Garza
Pharr Police Department
P.O. Box 1729
Pharr, Texas 78577

OR2022-19481

Dear Sgt. Garza:

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# 956094 (ORR# P002201).

The Pharr Police Department (the "department") received a request for information pertaining to a named officer. The department 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 information.

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. We understand the City of Pharr 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:

¹ Although the department also raises section 552.108 of the Government Code, it has not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume the department no longer asserts this exception. *See* Gov't Code §§ 552.301, .302.

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).² *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 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

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

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).

The department states 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, we find the submitted information is generally confidential under section 143.089(g) of the Local Government Code.

However, 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 [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).³ The requestor is a representative of the Texas Department of Public Safety 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 submitted information. Accordingly, 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

³ 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.

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). Therefore, the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code but, instead, must release it pursuant to section 1701.451(a-1) of the Occupations Code.⁴

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/be

Ref: ID# 956094

c: Requestor

⁴ Because the requestor has a special right of access to the information being released, the department must again seek a decision from this office if it receives a request for the same information from another requestor.