



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 13, 2022

Mr. Christopher Mullins  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3rd Floor  
Fort Worth, Texas 76102

OR2022-28041

Dear Mr. Mullins:

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# 969045 (Ref. No. P007868-060322).

The City of Fort Worth (the "city") received a request for certain information related to the employment or resignation of three named city police officers. We understand the city will redact certain information subject to section 552.117 of the Government Code. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state the city has notified a deceased individual's family of the request for information and of the right to submit comments to this office as to why the submitted information should not be released.<sup>1</sup> *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes city police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

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<sup>1</sup> As of this date, we have not received correspondence from any member of the deceased individual's family.

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.<sup>2</sup> However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

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. Section 552.101 encompasses information protected by 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 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. 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). *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 in conjunction with section 143.089. *See* Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). Information relating to alleged misconduct or disciplinary action must be removed from the

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<sup>2</sup> As we are able to make this determination, we need not address the remaining argument against disclosure of this information.

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.* 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 reasonable 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 information you indicated is maintained in the city police department's internal personnel files for the named officers under section 143.089(g). We note some of the information at issue, which we indicated, pertains to an allegation of misconduct against one of the named officers that ultimately resulted in disciplinary action against him pursuant to section 143.089. Thus, while this information may be kept in the internal file maintained under section 143.089(g), it must also be kept in the civil service personnel file maintained under section 143.089(a). *See* Local Gov't Code § 143.089(a)(2). In this instance, the request was received by the city, which has access to the files maintained under both subsections 143.089(a) and (g); therefore, the request encompasses both of these files. Accordingly, the city may not withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Based on your representations and our review, we find the remaining information at issue is confidential under section 143.089(g) of the Local Government Code. Accordingly, with the exception of the information we have indicated, which must be released, the city must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the Texas Commission on Law Enforcement (the “commission”) under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The remaining information contains an F-5 Separation of Licensee form that was submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. The submitted F-5 form does not reflect the named former officer to whom this form applies was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

We understand you will redact certain marked information subject to section 552.117 of the Government Code. However, we note you have marked information that is not subject to section 552.117 pursuant to section 552.024(c) of the Government Code and Open Records Decision No. 670 (2001).<sup>3</sup> Section 552.117 applies to records a governmental body holds in an employment capacity and excepts from disclosure the home address, home telephone number, emergency contact information, social security number and has family member information of certain individuals. Gov’t Code § 552.117. Upon review, we find the information we have marked for release is not subject to section 552.117 of the Government Code. Accordingly, with the exception of the information we marked for release, the city must withhold the information you marked under section 552.117 pursuant to section 552.024(c) and Open Records Decision No. 670.

In summary, as the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. With the exception of the information we have indicated, which must be released, the city must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must withhold the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations

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<sup>3</sup> Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See* Gov’t Code § 552.024(c). Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. *See* ORD 670 at 6.

Code. With the exception of the information we marked for release, the city must withhold the information you marked under section 552.117 of the Government Code. The city must release the remaining information.

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,

Chase D. Young  
Assistant Attorney General  
Open Records Division

CDY/jxd

Ref: ID# 969045

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)