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ATTORNEY GENERAL OF TEXAS

November 8, 2022

Mr. Juan E. Gonzalez
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OR2022-34831

Dear Mr. Gonzalez:

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# 983783.

The Weslaco Police Department (the "department"), which you represent, received a request for records pertaining to four named police officers. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.1175 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

¹ Although you also raise section 552.108 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302. Further, although you also claim section 552.1175 of the Government Code for portions of the submitted information, section 552.117 is the proper exception to raise in this instance because the department holds the submitted information in an employment capacity. Finally, we note, and you acknowledge, the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See id.* § 552.301(e). Nonetheless, sections 552.101, 552.102, 552.117, 552.1175, 552.130, and 552.140 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302, .352. Thus, we will consider the applicability of these exceptions to the submitted information, notwithstanding the department's violation of section 552.301 in requesting this decision. The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. We understand the City of Weslaco 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 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 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 contained within the department's internal files maintained pursuant to section 143.089(g) of the Local Government Code. We note some of the information at issue pertains to findings of misconduct that resulted in disciplinary suspensions of the officers at issue. As described above, documents in the officers' internal department files that relate to any misconduct in cases in which the department took disciplinary action against the officers must also be included in the officers' civil service files. *See* Local Gov't Code § 143.089(a)(2). Thus, the information pertaining to the disciplinary actions must be placed in the officers' civil service files, unless the department has already done so. However, because the department received the request and maintains the information at issue in the section 143.089(g) file for these officers, we find the information you indicated is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.²

Section 552.117(a)(11) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, as well as information that reveals whether the individual has family members. *See* Gov't Code § 552.117(a)(11). We note, for purposes of section 552.117, "family member" means a spouse, minor child, or adult child who resides in the person's home. *See id.* § 552.117(c) (providing that "family member" has meaning assigned by Fin. Code § 31.006(d)). We also note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

body and intended for official use). We note some of the remaining information pertains to an individual who is subject to section 552.117(a)(11) of the Government Code. Therefore, the department must withhold the information we marked under section 552.117(a)(11) of the Government Code; however, the cellular telephone number may only be withheld if a governmental body does not pay for the cellular telephone service.³

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or honorably retired peace officer, as well as information that reveals whether the current or honorably retired peace officer has family members, regardless of whether the current or honorably retired peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See id.* §§ 552.117(a)(2), .003(1-b) (defining “honorably retired” for purposes of the Act). For purposes of section 552.117, “family member” means a spouse, minor child, or adult child who resides in the person’s home. *See id.* § 552.117(c) (providing “family member” has meaning assigned by Fin. Code § 31.006(d)). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, we are unable to determine whether the individuals whose information is at issue are currently licensed or honorably retired peace officers. Therefore, we must rule conditionally. If the individuals at issue are currently licensed or honorably retired peace officers, then the department must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the individuals at issue are not currently licensed or honorably retired peace officers, then the department may not withhold the information at issue under section 552.117(a)(2). In either instance, we find you have failed to demonstrate the applicability of section 552.117(a)(2) to the remaining information, and thus, no portion of the remaining information may be withheld under section 552.117(a)(2).

If the individuals at issue are not current licensed or honorably retired peace officers, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See Gov’t Code* § 552.117(a)(1). As noted above, for purposes of section 552.117, “family member” means a spouse, minor child, or adult child who resides in the person’s home. *See id.* § 552.117(c). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee or official only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the individuals whose information is at issue are not currently licensed or

³ As our ruling is dispositive, we need not address your arguments against disclosure of this information.

honorably retired peace officers as defined by article 2.12, but timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, if the individuals at issue did not timely request confidentiality under section 552.024, then the department may not withhold the information at issue under section 552.117(a)(1). In either instance, we find you have failed to demonstrate the applicability of section 552.117(a)(1) to the remaining information, and thus, no portion of the remaining information may be withheld under section 552.117(a)(1).

Section 552.1175 of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* ORD 506 at 5-6. Upon review, we find some of the remaining information consists of personal information of individuals who may be among the types of individuals listed in section 552.1175(a). Thus, if the cellular telephone numbers we marked under section 552.1175 of the Government Code relate to individuals to whom section 552.1175 applies and the individuals elect to restrict access to the information in accordance with section 552.1175(b) of the Government Code, then the department must withhold such information under section 552.1175 of the Government Code as long as the cellular telephone services are not paid for by a governmental body. If the individuals at issue are not individuals to whom section 552.1175 applies, if no election is made, or the cellular telephone services are paid for by a governmental body, the department may not withhold the information at issue under section 552.1175.

After reviewing the remaining information, we have determined no novel or complex issue exists in the remaining information. Thus, we address your remaining argument and other applicable exceptions in a summary ruling.

The department must withhold the employee's date of birth in the remaining information under section 552.102(a) of the Government Code. The department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The department must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The department must withhold the submitted military discharge record under section 552.140 of the Government Code. The department 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jxd

Ref: ID# 983783

Enc. Submitted documents

c: Requestor
(w/o enclosures)