



February 4, 2002

Mr. Steven M. Kean
Senior Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR2002-0519

Dear Mr. Kean:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158180.

The City of Tyler (the "city") received two requests for information, each of which requests certain records relating to a named police officer. You state that some of the requested information will be released. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. You state that the city is a civil service municipality under chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the existence of two different types of personnel files relating to a police officer, including one that must be maintained by the civil service director or the director's designee and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The 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)-(2). 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 id. § 143.089(b)-(c). Generally, information held in a personnel file maintained under section 143.089(a) must be released, unless it is shown that some provision of chapter 552 of the Government Code permits the information to be withheld from public disclosure. *See* Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 at 6 (1990).

Subsection (g) of section 143.089 authorizes but does not require the police department to maintain for its use a separate and independent internal personnel file relating to a police officer. 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 that section 143.089(g) made these records confidential. *See City of San Antonio*, 851 S.W.2d at 949 (concluding that "the legislature intended to deem confidential the information maintained by the . . . police department for its own use under subsection (g)"). The court stated that the provisions of section 143.089 governing the content of the civil service file reflect "a legislative policy against disclosure of unsubstantiated claims of misconduct made against police officers and fire fighters, except with an individual's written consent." *Id.*; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App. - San Antonio 2000, no pet. h.) (restricting confidentiality under section 143.089(g) to "information reasonably related to a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files).

You indicate that the submitted information is contained in personnel files that the civil service director maintains under section 143.089(a) of the Local Government Code. You also state, however, that some of this information relates to complaints against a police officer that did not result in disciplinary action or to "[d]isciplinary actions that did not result in [s]uspension, [d]emotion or [p]romotional [p]assover." Information relating to alleged misconduct by a police officer must be held in a section 143.089(a) file only if disciplinary action was taken in accordance with chapter 143 of the Local Government Code. *See* Local

Gov't Code § 143.089(a)(2).¹ Information that relates to allegations of misconduct that did not result in disciplinary action under chapter 143 is made confidential under section 143.089(g). *See also* Local Gov't Code § 143.089(b)-(c); *City of San Antonio*, 851 S.W.2d at 949; Attorney General Opinion JC-0257 (2000). We find that section 143.089(g) makes some of the submitted information confidential. The city must withhold this information, which we have marked, under section 552.101 of the Government Code.

We now consider your claims with respect to the rest of the submitted information. Initially, we note that some of this information is comprised of performance evaluations of a police officer. A police officer's section 143.089(a) file must contain a periodic evaluation of the officer by a supervisor. *See* Local Gov't Code § 143.089(a)(3). The city raises no specific exception to the disclosure of these performance evaluations. We therefore conclude that the performance evaluations must be released. *See* Local Gov't Code § 143.089(f); *see also* Gov't Code § 552.022(a)(1) (providing that completed evaluation made of, for, or by a governmental body must be released unless it is excepted from disclosure under section 552.108 or made expressly confidential under other law).

Next, we note that one of the submitted documents relates to participation in the Texas Municipal Retirement System. Section 855.115(a) of the Government Code provides in part that "information contained in records that are in the custody of the retirement system concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section 552.101" of the Government Code, subject to certain exceptions that do not appear to be applicable here. We have marked the document that the city must withhold under section 552.101 in conjunction with section 855.115 of the Government Code.

Section 6103(a) of title 26 of the United States Code makes federal tax return information confidential. The submitted W-2 and W-4 forms are confidential under section 6103(a) and must also be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Certain kinds of personal financial information are protected by common-law privacy under section 552.101. In prior decisions, this office has determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body.

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055.

See, e.g., Open Records Decision Nos. 600 at 9-12 (1992) (TexFlex benefits), 545 at 3-5 (1990) (deferred compensation plan), 523 at 3-4 (1989) (certain financial information contained in loan files of veterans participating in Veterans Land Board programs), 373 at 3-4 (1983) (certain financial information contained in housing rehabilitation grant application files). Thus, personal financial information that does not relate to a transaction with a governmental body is protected by common-law privacy under section 552.101. We have marked the types of personal financial information that the city must withhold.

The city also raises section 552.117 of the Government Code. Section 552.117(2) excepts from disclosure the current and former home addresses and telephone numbers of a peace officer, the officer's social security number, and information that reveals whether the officer has family members, regardless of whether the officer has complied with section 552.024 of the Government Code.² We have marked the information that the city must withhold under section 552.117(2).³

Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). We have marked Texas driver's license information that the city must withhold under section 552.130.

Lastly, we note that the submitted documents include an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 1544, § 5 (to be codified at Transp. Code § 550.065(c)(4)). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the three items of information specified by the statute. *Id.* In this instance, the requestor has not provided the city with two of the three items of information. Thus, the city must withhold the accident report under section 550.065(b).

²Section 552.117(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure.

³We note that section 552.117(2) does not protect information relating to a deceased peace officer. *But see* Gov't Code § 552.117(4) (exception for information relating to peace officer killed in line of duty).

In summary, some of the submitted information is confidential under section 143.089(g) of the Local Government Code, section 855.115 of the Government Code, section 6103(a) of title 26 of the United States Code, and common-law privacy. The city must withhold this information under section 552.101 of the Government Code. A peace officer's home address, home telephone number, social security number, and information that reveals whether the officer has family members must be withheld under section 552.117(2) of the Government Code. Texas driver's license information must be withheld under section 552.130. The city must withhold the peace officer's accident report under section 550.065(b) of the Transportation Code. The rest of the submitted information must be released. As sections 552.101, 552.117, and 552.130 of the Government Code are dispositive, we need not address section 552.102.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

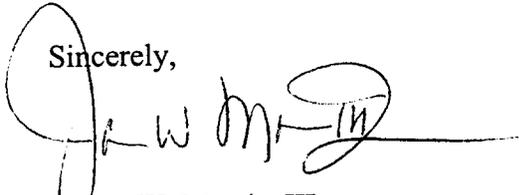
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J W Morris III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 158180

Enc: Marked documents

c: Mr. Earl L. Pryor
Attorney at Law
412 W. Phillips, Suite 100
Conroe, Texas 77301
(w/o enclosures)