



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2009

Ms. Eileen McPhee
Carls, McDonald & Dalrymple, L.L.P.
901 South Mopac Expressway, Suite 500
Austin, Texas 78746

OR2009-03719

Dear Ms. McPhee:

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# 338530.

The City of Georgetown (the "city"), which you represent, received a request for a named peace officer's employment file. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, and 552.147 of the Government Code.¹ We have considered the exceptions you claim 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." Gov't Code § 552.101. This section encompasses section 143.089 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police 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). The police officer's civil service file must contain specific items, including commendations, periodic evaluations by the officer's supervisor, and documents from the employing department relating to any misconduct in which the department took disciplinary action

¹Although you raise section 552.1175 of the Government Code, section 552.117 is the proper exception to raise in this instance as the city holds the information of the named employee in an employment context.

against the officer under chapter 143 of the Local Government Code. *See id.* § 143.089(a)(1)-(2). In cases in which a police department investigates an 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). *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 chapter 552 of the Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to an officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the police department and that is maintained in a police department's internal personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied).

You inform us that the city is a civil service city under chapter 143 of the Local Government Code. You assert that the information labeled Group 2 is maintained in the officer's departmental personnel file and pertains to either allegations that did not result in discipline or allegations that were determined to be unfounded. Based on your representations and our review of the submitted information, we agree that the city must withhold the information labeled Group 2 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 the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment

program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find portions of the remaining information, which we have marked, constitute personal financial information. Furthermore, we find that this information is not of legitimate concern to the public. Therefore, the city must withhold the marked information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and the family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the officer requested confidentiality under section 552.024 or 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Accordingly, the city must withhold the information you have marked, as well as the information we have marked, under section 552.117(a)(2) of the Government Code.²

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 [or] a motor vehicle title or registration issued by an agency of this state.” *Id.* § 552.130. We note that some of the information you have marked under section 552.130 does not constitute Texas motor vehicle record information for the purposes of section 552.130. This information, which we have marked for release, may not be withheld under section 552.130. We have also marked additional information subject to section 552.130. Accordingly, the city must withhold the marked Texas motor vehicle record information, except where we have marked for release, under section 552.130 of the Government Code.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136. Accordingly, the city must withhold the information you have marked, in addition to the information we have marked, under section 552.136 of the Government Code.

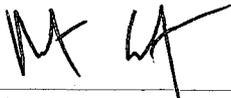
In summary, the city must withhold: (1) the information labeled Group 2 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; (2) the information marked under section 552.101 in conjunction with common-law privacy; (3) the information marked under section 552.117(a)(2) of the Government Code; (4) the marked Texas motor vehicle record information, except where we have marked for release, under section 552.130 of the Government Code; and (5) the information marked under section 552.136 of the Government Code. The remaining information must be released.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/jb

Ref: ID# 338530

Enc. Submitted documents

cc: Requestor
(w/o enclosures)