



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 3, 2009

Ms. Eileen McPhee  
Carls, McDonald & Dalrymple, L.L.P  
Barton Oaks Plaza 2  
901 South Mopac Expressway, Suite 500  
Austin, Texas 78746

OR2009-10678

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# 352206, (CMcD # 2098).

The City of Georgetown (the "city"), which you represent, received a request for information related to any internal or administrative investigations, supervisory counseling, and critical incident logs for the interim police chief. You state that some responsive information will be released. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.<sup>1</sup> 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. You state the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). 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 which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension,

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<sup>1</sup>Although 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 employees at issue in an employment context.

demotion, and uncompensated duty. *Id.* §§ 143.051-.055; *see* Attorney General Opinion JC-0257 (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). *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 police department because of its investigation into a police officer's misconduct, and the police 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). However, information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that a portion of the submitted information, which you have marked Exhibit B-2, is maintained in the Georgetown Police Department's internal file as authorized under section 143.089(g) of the Local Government Code. Based upon your representations and our review, we agree that the information marked Exhibit B-2 must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

You claim that portions of the officer's civil service file, which you have marked in Exhibit B-1, are excepted under section 552.117 of the Government Code. 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 section 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Accordingly, the city must withhold the information that you have marked in red and the information we have marked in blue, including the confidential information within minutes four through nine of the submitted audio recording, under section 552.117(a)(2). In the event the city does not have the technological capacity to redact the type of information we have indicated from the submitted recording, the city must withhold the audio recording in its entirety.

We note that the officer's civil service file also contains information subject to section 552.101 of the Government Code. Section 552.101 incorporates the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of

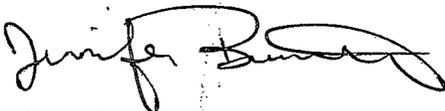
common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). A portion of the remaining information, which we have marked, is highly intimate or embarrassing and not of legitimate public interest. Thus, this marked information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must also withhold the information you have marked in red and we have marked in blue, including the confidential information within minutes four through nine of the audio recording under section 552.117(a)(2) of the Government Code. If the city lacks the technological capacity to redact from the audio recording the type of information we have indicated, the city must withhold the audio recording in its entirety. The city must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/eeg

Ref: ID# 352206

Enc. Submitted documents

c: Requestor  
(w/o enclosures)