



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2009

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2009-14627

Dear Ms. Quinn:

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# 358402 (City Reference # 09-291).

The Cedar Park Police Department (the "department") received a request for a specified officer's personnel file and any disciplinary memos that include the same officer. You indicate that the department referred the request to the civil service director for the City of Cedar Park (the "city"), and you have submitted the officer's civil service file maintained by the city pursuant to section 143.089(a) of the Local Government Code, along with the officer's personnel file maintained by the department pursuant to section 143.089(g) of the Local Government Code.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code.² 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. Section 552.101 encompasses section 143.089 of the Local Government Code. You state that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a

¹Section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

²We note that, although the department actually raises section 552.1175 of the Government Code, the proper exception in this instance is section 552.117 of the Government Code because the department holds the submitted officer's information in an employment context.

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. *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 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). In cases in which a police department investigates alleged misconduct by a police officer and takes disciplinary action against the police officer, it is required by section 143.089(a)(2) of the Local Government Code 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 pursuant to section 143.089(a). *See 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 file for the disciplined police officer. *See id.* Chapter 143 of the Local Government Code prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. Such records are subject to release under the Act. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to alleged misconduct by a police officer may not be placed in that officer's 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 the police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *see also City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that Exhibit D consists of information maintained in the department's internal personnel files pursuant to section 143.089(g). Based on your representation and our review, we conclude that Exhibit D is confidential under section 143.089(g) of the Local Government Code. Therefore, the department must withhold this information under section 552.101 of the Government Code.³ However, we note that Exhibit D contains letters of commendation for the specified officer. These letters must also be contained in the officer's civil service file maintained under section 143.089(a). *See* Local Gov't Code § 143.089(a)(1)-(2) (listing items that must be contained in officer's civil service file).

³In light of this conclusion, we need not address your remaining argument against disclosure of Exhibit D.

Exhibit C consists of a portion of the officer's civil service file maintained by the city under section 143.089(a). You claim that this information is excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990)*. Upon review, we agree that Exhibit C, in its entirety, is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy.

Exhibit B consists of the remainder of the officer's civil service file maintained by the city under section 143.089(a). This exhibit contains information subject to section 552.117(a)(2) of the Government Code, which excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.⁴ Gov't Code § 552.117(a)(2). Therefore, the department must withhold the personal information of a peace officer that we have marked under section 552.117(a)(2) of the Government Code.

We note that 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(a)(1), (2).⁵ Accordingly, the department must withhold the Texas driver's license information we have marked pursuant to section 552.130.

Finally, we note that section 552.101 also encompasses information made confidential by statute. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms)*. Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of income, payments, tax withheld, deficiencies, overassessments or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return . . . or the determination of the existence, or possible existence, of liability . . . for any tax, . . .

⁴"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

⁵The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

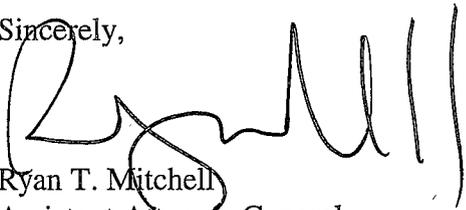
penalty, . . . , or offense[.]” See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the department must withhold the W-4 tax forms we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

In summary, the department: (1) must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; (2) must withhold Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy; (3) must withhold the portions of Exhibit B that we have marked under section 552.117(a)(2), section 552.130, and section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code; and (4) must release the remainder of the submitted 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, toll free, at (888) 672-6787.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 358402

Enc. Submitted documents

cc: Requestor
(w/o enclosures)