



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2009

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 778469-9277

OR2009-18089

Dear Mr. Bounds:

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# 364978.

The City of Corpus Christi (the "city") received a request for all whistleblower complaints filed during a certain time period and copies of the related investigations, as well as the length of administrative leave imposed and degree of disciplinary action received in each investigation. You state the city has released some of the responsive information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific

¹You inform us the city no longer asserts the other exceptions to disclosure that you raised in your October 13, 2009, correspondence with our office.

information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, the city received the request for information on September 29, 2009, but did not submit written comments stating the reasons the exceptions it raised apply or submit the requested information for our review until October 22, 2009. Consequently, we find the city failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to overcome this presumption, we will consider this exception.

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 information protected by other statutes, including section 143.089 of the Local Government Code. You state the City of Corpus Christi is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police officer's civil service file that a city's 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).

In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against the police 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).² *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

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051- .055. An oral or written reprimand does not constitute discipline under chapter 143.

placement in the civil service personnel file. *See 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 a police 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. *See* 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 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); *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W. 2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You indicate that the submitted information is maintained within the internal police department file for each of the officers in question. We note that one of the submitted files includes commendations, periodic evaluations, and documents relating to officer misconduct in which the city's police department took disciplinary action against the officer. These records, which we have marked, must also be maintained in the named officer's civil service file under section 143.089(a). In this instance, the request was received by the city, which is required to maintain a civil service file subject to section 143.089(a). Consequently, if you have not already done so, this information must also be placed in the officer's civil service file. Upon review, we agree the remaining information must be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

We note that portions of the information in the officer's civil service file are subject to sections 552.117(a)(2) and 552.130 of the Government Code.³ Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code.⁴ *See* Gov't Code § 552.117(a)(2). We have marked a peace officer's social security number that must be withheld under section 552.117(a)(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 or a motor vehicle title or

³The Office of the Attorney General will raise mandatory exceptions like sections 552.117 and 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).

⁴Section 552.117(a)(2) applies to a "peace officer" as defined by article 2.12 of the Code of Criminal Procedure.

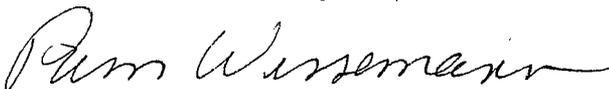
registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). The city must withhold the license plate numbers we have marked pursuant to section 552.130.⁵

In summary, with the exception of the information we have marked that is maintained in the police officer's civil service file, the city must withhold the submitted information under section 143.089(g) of the Local Government Code. The city must withhold the information we have marked in the police officer's civil service file under sections 552.117(a)(2) and 552.130 of the Government Code. The remaining information we have marked that is maintained in the police officer's civil service file must be released to the requestor.

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/cc

Ref: ID# 364978

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.