



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 9, 2010

Mr. Eloy Padilla  
Assistant City Attorney  
City of Del Rio  
109 West Broadway Street  
Del Rio, Texas 78840

OR2010-05044

Dear Mr. Padilla:

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# 376711.

The City of Del Rio (the "city") received a request for the requestor's personnel files from the city and from the Del Rio Police Department (the "department") and any investigative material relating to the requestor's attempted re-employment with the department. You state you will release some information to the requestor.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes information concerning officers other than the requestor and information created after the city received the present request. This information, which we have marked, is therefore not responsive to the present request. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we note you have not submitted any records relating to the requestor's city and department personnel files. We assume, to the extent information responsive to this portion of the request existed when the city received the request for information, you have released

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<sup>1</sup> Section 143.089(g) of the Local Government Code requires a police department that receives a request for information maintained in a personnel file under section 143.089(g) to refer that requestor to the civil service director or the director's designee. Local Gov't Code § 143.089(g).

it to the requestor. If not, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code for the requestor's personnel files. You state the City of Del Rio 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, demotion, and uncompensated duty. *Id.* §§ 143.051–.055.

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 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 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, 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 a charge of misconduct. *See* Local Gov't Code § 143.089(b). In addition, a document relating to disciplinary action against a police officer that has been placed in the officer's personnel file as provided by section 143.089(a)(2) must be removed from the officer's file if the commission finds that the disciplinary action was taken without just cause or the charge of misconduct was not supported by sufficient evidence. *See* Local Gov't Code § 143.089(c). 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 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 General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

Although you assert the submitted information is confidential under section 143.089(g) of the Local Government Code, we note the submitted information consists of information relating to the requestor's application for re-employment. You do not inform us the submitted information is maintained in the department's internal personnel files concerning this officer. Moreover, it cannot be said the information is "reasonably related to [the police officer's] employment relationship" since the information at issue concerns the requestor's unsuccessful attempt to obtain employment with the department. *See* 47 S.W.3d at 563. Therefore, we are unable to conclude the submitted information is confidential pursuant to section 143.089(g) of the Local Government Code; and the city may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses chapter 411 of the Government Code. Chapter 411 deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. We note that an individual's current involvement in the criminal justice system, including active warrant information, does not constitute criminal history record information. In addition, information relating to routine traffic violations is not excepted from release under section 552.101 of the Government Code on this basis. *Cf. id.* § 411.082(2)(B). Upon review, we find portions of the submitted information constitute CHRI generated by the National Crime Information Center or the Texas Crime Information Center. Accordingly, the city must withhold this information, which we have marked, under section 552.101 in conjunction with section 411.083 of the Government Code.

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. Gov't Code § 552.117(a)(2). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, the remaining

information contains personal information of a peace officer. The city must withhold this information, which we have marked, under section 552.117(a)(2) of the Government Code. We further note the remaining information contains cellular telephone numbers of city police officers, and it is unclear whether the city pays for the officers' cellular telephone service. Accordingly, if the city does not pay for the officers' cellular telephone service, then the city must withhold the information we have conditionally marked pursuant to section 552.117(a)(2) of the Government Code.

We further note some of the remaining information may fall under section 552.1175 of the Government Code. Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(b). The submitted information includes the personal information of peace officers who are not city employees. To the extent these individuals are currently licensed peace officers who elect with the city to restrict public access to their personal information, the city must withhold the information we have marked under section 552.1175. To the extent these individuals are not currently licensed peace officers who elect with the city to restrict public access to their personal information, the city may not withhold information pertaining to these individuals under section 552.1175.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). Therefore, the city must withhold the Texas driver's license information that we have marked under section 552.130.<sup>2</sup>

In summary, the city must withhold the CHRI we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. The city must withhold the personal information of city peace officers we have marked, including the cellular telephone numbers if the city does not pay for the officers' cellular telephone service, under

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<sup>2</sup> We 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 drivers license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

section 552.117 of the Government Code. The city must withhold the information we have marked under section 552.1175 to the extent the individuals whose information is at issue are currently licensed peace officers who elect with the city to restrict public access to their personal information. The city must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

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, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/rl

Ref: ID# 376711

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> We note the requestor, as the individual whose information is at issue, has a special right of access to some of the information being released in this instance. Gov't Code § 552.023(a) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.