



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2011

Ms. Karen Anderson
Mr. Benjamin Sampract
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2011-12197

Dear Ms. Anderson & Mr. Sampract:

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# 427705 (Fort Worth PIR# W009307).

The City of Fort Worth (the "city") received a request for information relating to a named officer, specifically all internal investigations and dispositions of allegations, or a written statement that no such records exist, and verification of employment dates. You state you have released some information. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.117 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. 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

¹Although you initially raised section 552.103 of the Government Code in your letter dated June 23, 2011, we understand you no longer assert that exception.

§ 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; *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 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, 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 the information in Exhibit C1 and the information you have marked in Exhibit C2 is maintained in the city police department's internal files pursuant to section 143.089(g). You also state the information at issue relates to allegations of misconduct that were determined to be unfounded or did not result in disciplinary action under chapter 143 of the Local Government Code. Based on your representations and our review, we conclude the city must withhold Exhibit C1 in its entirety, as well as the information you have marked in Exhibit C2, under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

You state the remaining information in Exhibit C2 is the named officer's civil service file. We note that section 143.089(e) of the Local Government Code grants a right of access to a police officer for "any letter, memorandum, or document placed in the person's personnel file." *See* Local Gov't Code § 143.089(e). This office has interpreted this provision to grant a police officer an affirmative right of access to the information in his or her personnel file maintained under section 143.089(a). *See* Open Records Decision No. 650 at 2 n.2 (1996). In this instance, the requestor has provided the city with a signed authorization form from the named officer to release the requested information. Thus, this requestor has a statutory right of access to the named officer's civil service file in Exhibit C2.

You have redacted certain motor vehicle record information in Exhibit C2 under section 552.130 of the Government Code pursuant to the previous determination issued in Open Records Decision No. 684 (2009). Open Records Decision No. 684 serves as a previous determination to all government bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country and information related to a motor vehicle title or registration issued by an agency of this state or another state or country. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). We note the remaining information in Exhibit C2 contains other information, which we have marked, that also is subject to section 552.130. Although we agree the information you have redacted, along with the additional information we have marked, is generally excepted under section 552.130 of the Government Code, as previously noted the requestor has a statutory right of access to the information at issue.

A specific statutory right of access prevails over general exceptions to disclosure. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Accordingly, we must address the conflict between the access provided under section 143.089(e) of the Local Government Code and the confidentiality provided under section 552.130 of the Government Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails over the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, section 143.089 generally applies to personnel records of a peace officer. Section 552.130 specifically protects motor vehicle record information. Thus, we find the confidentiality provided by section 552.130 is more specific than the general right of access provided by section 143.089(e). Accordingly, the city must withhold the information you have redacted, along with the additional information we have marked, under section 552.130 of the Government Code.

You also assert portions of the remaining information are excepted from disclosure under section 552.117 of the Government Code. We note, however, section 552.117 is a general exception to disclosure under the Act and a specific statutory right of access prevails over general exceptions to disclosure under the Act. *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006)

(common law controls only where there is no conflicting or controlling statutory law). Because the requestor has a statutory right of access to the information at issue, the city may not withhold the information you have marked in Exhibit C2 under section 552.117 of the Government Code.

In summary, the city must withhold Exhibit C1 and the information you have marked in Exhibit C2 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must withhold the information you have redacted, along with the additional information we have marked, under section 552.130 of the Government Code. The remaining information must be released.²

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,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 427705

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a special right of access to some of the information being released, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office.