



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2012

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2012-09476

Dear Mr. Weir:

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# 456936 (SAPD No. W006863).

The San Antonio Police Department (the "department") received a request for information pertaining to an officer involved automobile accident. You state some of the requested information has been released to the requestor. You claim that 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 address the requestor's contention that the department failed to timely request a ruling. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general 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 information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The requestor contends that he made a previous request for the information at issue on February 23, 2012. Whether or not the requestor made a proper request for the information at issue to the department on February 23, 2012 is a question of fact. This office is unable to resolve disputes of fact in

the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). The department represents it received the request for the first time on April 5, 2012. Having considered the department's representations, we find the department complied with section 552.301 of the Government Code in requesting this decision, and we will consider its claims for 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 of the Government Code encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065. You claim a portion of the submitted information is subject to section 550.065 of the Transportation Code. Section 550.065 applies only to accident report forms completed pursuant to chapter 550 or section 601.004 of the Transportation Code. *See id.*; *see also id.* § 550.064 (discussing information required in accident report form). Upon review, we find the department's Vehicle Accident Report and Officer Driving Record were not completed pursuant to chapter 550 or section 601.004 of the Transportation Code. Therefore, this information is not subject to section 550.065 of the Transportation Code and may not be withheld under section 552.101 on that basis.

However, we find a portion of the submitted information consists of a CR-3 crash report form that was completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the submitted CR-3 accident report we have marked under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code.

You claim the remaining information is excepted from disclosure under section 552.101 in conjunction with section 143.089 of the Local Government Code.¹ Section 143.089 provides for the existence of two different types of personnel files relating to a police officer, including one that must be maintained as part of the officer's civil service file and another

¹You indicate the City of San Antonio is a civil service municipality under chapter 143 of the Local Government Code.

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 any instance 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 *et seq.* 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). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. See Local Gov't Code § 143.089(b)-(c).

Subsection (g) of section 143.089 authorizes the police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Id. § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to the file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined section 143.089(g) made the records

~~confidential. See *id.* at 949; see also *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet.) (restricting confidentiality under Local Gov't Code § 143.089(g) to “information reasonably related to a police officer’s or fire fighter’s employment relationship”); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of Local Gov't Code § 143.089(a) and (g) files).~~

You state the submitted information is contained in a personnel file maintained by the department in connection with the named officer’s employment. However, we note section 143.021(b) of the Local Government Code provides that “[e]xcept for the department head and a person the department head appoints in accordance with Section 143.014 or 143.0102, each fire fighter and police officer is classified as prescribed by this subchapter and has civil service protection.” Local Gov't Code § 143.021(b) (emphasis added). Section 143.003 of the Local Government Code defines “department head” as “the chief or head of a fire or police department or that person’s equivalent, regardless of the name or title used.” *Id.* § 143.003(2). The information at issue pertains to an assistant police chief. As we are unable to determine if the named assistant police chief was appointed by the department head pursuant to section 143.014 or section 143.0102, we must rule conditionally. If the named assistant police chief was appointed by the department head in accordance with section 143.014 or section 143.0102, then no part of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, if the named assistant police chief was not appointed pursuant to either of these sections, then the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit, or a motor vehicle title or registration, issued by an agency of this state or another state or country.² *Id.* § 552.130(a)(1), (2). Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the CR-3 form we have marked under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code. If the named assistant police chief was not appointed by the department head pursuant to section 143.014 or section 143.0102 of the Local Government Code, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, if the assistant police chief was appointed by the department head in accordance with section 143.014 or section 143.0102, then no part of Exhibit III may be

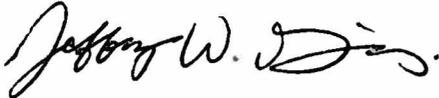
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withheld under section 143.089(g) of the Local Government Code. The department must withhold the information we have marked under section 552.130 of the Government Code. 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, 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 456936

Enc. Submitted documents

c: Requestor
(w/o enclosures)