



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 23, 2013

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2013-06636

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# 484992 (PIR # 13-276).

The City of Cedar Park (the "city") received a request for (1) a copy the video and audio recording of a specified civil service commission meeting; (2) any audio, video or other information pertaining to three specified civil service commission meetings; (3) any communications made to Industrial/Organizational Solutions, Inc. ("IOS") within a specified period of time and pertaining to specified promotional exams; (4) any communications to or from nine specified individuals, made within a specified period of time, pertaining to specified promotional exams, and including the exams; (5) any information pertaining to disciplinary actions taken against three named individuals contained within their personnel files; (6) any information in the possession of a named individual that pertains to specified promotional exams; (7) copies of the specified promotional exams; and (8) copies of two specified promotion lists.¹ You state the city is releasing some of the requested information to the requestor. We understand the city will redact personal information of peace officers under section 552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670 (2001), and personal e-mail addresses under section 552.137 of the Government

¹You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Code pursuant to Open Records Decision No. 684 (2009).² You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state that release of a portion of the requested information may implicate the proprietary interests of IOS. Accordingly, you notified IOS of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have received comments from IOS. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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 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 that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). Under section 143.089(a), 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 (2000) (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 police department must forward them to the civil service commission

²Open Records Decision No. 670 is a previous determination authorizing all governmental bodies that are subject to the Act to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without the necessity of requesting an attorney general decision under section 552.117(a)(2) of the Government Code. Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public, under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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 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 a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *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 state that the information in Exhibit F is maintained in the city police department's internal files under section 143.089(g). Upon review, we conclude that the information in Exhibit F is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 143.032 of the Local Government Code. Section 143.032 provides that a person commits an offense if the person knowingly or intentionally reveals a part of a promotional examination to an unauthorized person or receives from an authorized or unauthorized person a part of a promotional examination for unfair personal gain or advantage. *See* Local Gov't Code § 143.032(h); *see also id.* § 143.032 (classifying violation of subsection (h) as criminal offense). Eligible promotional candidates from fire or police departments are entitled to inspect their own promotional examination and answers, the examination grading, and the source material for the examination. *See id.* § 143.034(a); *see also id.* § 143.034(b) (prohibiting eligible promotional candidate from removing examination or copying examination questions). We agree that the clear language of section 143.032 makes the promotional examination questions and answer sheets, as "part of a promotional examination," confidential and permits their disclosure only to an authorized person. *Cf.* Open Records Decision No. 584 (1991) (statute making release of information criminal offense deems information confidential by law for purposes of section 552.101). The city explains the requestor did not take the promotional examination at issue. Thus, the requestor is not an authorized person who may receive the examination questions and answers. Therefore, the promotional examinations submitted as Exhibit G are confidential under section 143.032(h) of the Local Government Code and must be withheld under section 552.101 of the Government Code.³

You state, and we agree, some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception

³As our ruling for this information is dispositive, we do not address IOS's arguments against its disclosure.

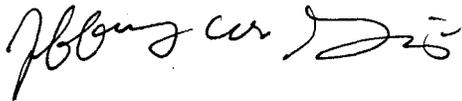
applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must withhold under section 552.101 of the Government Code Exhibit F in conjunction with section 143.089(g) of the Local Government Code and Exhibit G in conjunction with section 143.032(h) of the Local Government Code. The remaining information must be released, but any information protected by copyright may only be released in accordance with copyright law.

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# 484992

Enc. Submitted documents

c: Requestor
(w/o enclosures)

John V. Harnisher, Ph.D.
President
I/O Solutions, Inc.
1127 South Mannheim Road, Suite 203
Westchester, Illinois 60154
(w/o enclosures)