



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 23, 2013

Ms. Michelle M. Kretz  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102-6311

OR2013-18461

Dear Ms. Kretz:

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# 503268 (FW PIR W027965).

The Fort Worth Police Department (the "department") received a request for disciplinary and award information pertaining to a named officer. You indicate you will redact information subject to section 552.117 of the Government Code, as permitted by section 552.024(c) of the Government Code, and Open Records Decision No. 670 (2001).<sup>1</sup> Further, you state you will redact information pursuant to sections 552.130(c) and 552.136(c) of the Government

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<sup>1</sup>Section 552.117(a)(1) of the Government Code exempts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. See Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117(a)(1) without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. See *id.* §§ 552.117, .024(c); see *id.* § 552.024(c-1) (requestor may appeal governmental body's decision to withhold information under section 552.024(c) to attorney general), .024(c-2) (governmental body withholding information pursuant to section 552.024(c) must provide certain notice to requestor). Open Records Decision No. 670 authorizes the withholding of a peace officer's home address and telephone number, personal cellular telephone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. See Open Records Decision No. 670.

Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim 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. This section encompasses information protected by other statutes, such as section 550.065(b) of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). 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 forms contained in Exhibits C-1 and C-2 under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses section 143.089 of the Local Government Code. You state the City of Fort Worth 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

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<sup>2</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

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 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 explain the remaining information in Exhibit C-1 and the information you have marked in Exhibit C-2 is maintained in the department’s internal file for the named officer, and this information relates to investigations that did not result in disciplinary action against the named officer. Based on your representations and our review, we find the department must withhold the information at issue in Exhibits C-1 and C-2 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”), which governs access to medical records. Section 159.002 of the MPA provides:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002. Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. The information we have marked consists of medical records subject to the MPA. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the *Texas Comptroller of Public Accounts. Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). You have marked a birth date and an age to withhold under section 552.102. The department must withhold the birth date you have marked under section 552.102 of the Government Code. However, we conclude that an employee’s age is not confidential under section 552.102, may not be withheld on that basis, and must be released.

In summary, the department must withhold the submitted CR-3 accident report forms contained in Exhibits C-1 and C-2 under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The department must withhold the information at issue in Exhibits C-1 and C-2 under section 552.101 of the Government Code in conjunction with section 143.089(g) 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 159.002 of the Occupations Code. The department must withhold the birth date you have marked under section 552.102 of the Government Code. The department must release the remaining information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/bhf

Ref: ID# 503268

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)