ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2014

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2014-18466

Dear Mr. Kopp:

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# 540028 (COSA Nos. W030439 and W030481).

The City of San Antonio (the "city") received a request for information pertaining to a specified police report, including specified photos and a specified video recording. The city received a second request from a different requestor for nine categories of information pertaining to the specified police report and a related specified internal affairs report. You state the city will release some information. 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, you inform us some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2013-03063 (2013) and 2013-05392 (2013). In Open Records Letter No. 2013-03063, we concluded the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. In Open Records Letter No. 2013-05392, we concluded (1) the city must release certain court-filed documents pursuant to section 552.022(a)(17) of the Government Code; (2) the city must withhold certain information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; and (3) with the exception of the DIC-24 and DIC-25 forms and basic information, the city may withhold certain information under section 552.108(a)(1) of the Government Code.

We note the requestor in Open Records Letter No. 2013-05392 had a right of access pursuant to section 552.023 of the Government Code to information that would otherwise be withheld under sections 552.117(a)(1) and 552.130 of the Government Code. One of the current requestors does not have such a right of access to this information. Thus, we find, with respect to the second requestor, the circumstances on which Open Records Letter No. 2013-05392 was based have changed for the information that is subject to sections 552.117(a)(1) and 552.130. We note section 552.024(c) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). We also note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) without the necessity of seeking a decision from the attorney general.[1] *See id.* § 552.130(c). We understand the city will withhold the information subject to sections 552.117(a)(1) and 552.130 of the Government Code from the second requestor pursuant to sections 552.024(c) and 552.130(c) of the Government Code. As to the remaining information at issue in Open Records Letter No. 2013-05392, there is no indication the law, facts, and circumstances on which the ruling was based have changed. Thus, with respect to the second requestor, the city must continue to rely on Open Records Letter No. 2013-05392 as a previous determination and withhold or release the remaining identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Further, you inform us the law, facts, and circumstances on which the ruling was based have changed not changed with respect to the first requestor. Thus, the city must rely on Open Records Letter No. 2013-05392 as a previous determination and withhold or release the identical information in accordance with that ruling for the first requestor.

Additionally, you inform us the law, facts, and circumstances on which Open Records Letter No. 2013-03063 was based have not changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2013-03063, we conclude the city must continue to rely on Open Records Letter No. 2013-03063 as a previous determination and withhold or release the identical information in accordance with that ruling for both requestors. Next, we address your argument against the disclosure of the submitted information that is not subject to these prior rulings.

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[1]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 552.101 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 information protected by other statutes, such as 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 maintenance of two different types of personnel files for each police officer employed by a civil service city: 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 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)-(3). 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 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 that 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).

Section 143.089(g) authorizes a police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. *See id.* § 143.089(g). 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 that 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 these records confidential. *See City of San Antonio,* 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (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 (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You state the submitted information is contained within the city's police department's internal files maintained pursuant to section 143.089(g) of the Local Government Code. Further, you inform us the investigation at issue did not result in disciplinary action. We note the submitted information consists of pictures. In this instance, the requestors seek information pertaining to a specified police report, including photos. We note the confidentiality provided by section 143.089(g) may not be engrafted on information that exists independently of a file maintained under section 143.089(g). In this instance, we are unable to determine, and you do not state, the submitted information is maintained solely in the section 143.089(g) files of the officer at issue. Accordingly, we must rule conditionally. To the extent the submitted information is maintained solely in the officer's section 143.089(g) file, it is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code. However, to the extent the submitted information also exists independently of the officer's section 143.089(g) file, it is not confidential under section 143.089(g) of the Local Government Code and may not be withheld under section 552.101 of the Government Code on that basis and, as you raise no further exceptions against disclosure, it must be released.

In summary, for the information that is not subject to sections 552.117(a)(1) and 552.130 of the Government Code, the city must continue to rely on Open Records Letter No. 2013-05392 as a previous determination and withhold or release the identical information in accordance with that ruling to the second requestor. The city must rely on Open Records Letter No. 2013-05392 as a previous determination and withhold or release the identical information in accordance with that ruling for the first requestor. The city must continue to rely on Open Records Letter No. 2013-03063 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent

the submitted information is maintained solely in the officer's section 143.089(g) file, it must be withheld under section 552.101 of the Government Code. However, to the extent the submitted information also exists independently of the officer's section 143.089(g) file, it may not be withheld under section 552.101 of the Government Code on that basis and 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.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 Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 540028

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)