



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2015

Ms. Judith Sachitano Rawls
Police Administrative Legal Counsel
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2015-04354

Dear Ms. Rawls:

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# 555582.

The Beaumont Police Department (the "department") received a request for four categories of information pertaining to the use of firearms while on duty by officers of the department.¹ The department states it will release some information. The department claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code.² We have considered the exceptions the department claims and reviewed the submitted information, a portion of which the department indicates consists of a representative sample.³ We have also considered comments submitted by a

¹The department states it sought and received clarification of the request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the 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 overbroad 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).

²Although the department did not raise section 552.130 of the Government Code in its brief to this office, we understand the department to raise this exception based on its markings.

³We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

representative for the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, in the comments submitted to this office, we note the requestor's representative states the requestor withdraws his request for "documents related to citizen complaints against officers that did not result in any discipline." Accordingly, this information, which we have marked, is not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the department is not required to release such information in response to this request.⁴

Next, the department states the information it has indicated in Exhibit B was the subject of a previous request for information in response to which this office issued Open Records Letter No. 2014-22940 (2014). In that ruling, we determined, in relevant part, the department must withhold the information it marked under section 143.089(g) of the Local Government Code and must release the remaining information at issue. As the department states the circumstances on which the prior ruling was based have not changed, the department must continue to rely on Open Records Letter No. 2014-22940 as a previous determination and withhold or release this 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). The department seeks to withhold the information it marked pertaining to required procedural sequences, the standards officers must meet with particular weapons, the serial numbers of the weapons used by officers, and the officers' individual scores with these weapons. The department explains the release of this information could allow a suspect evading arrest to anticipate officer actions, compromise officer safety, provide an advantage to those wishing to harm the police, and allow individuals to mask

⁴As our ruling is dispositive, we need not address the department's argument against disclosure of this information.

illegal weapons by using forged serial numbers. Based on these representations and our review, we agree the release of this information would interfere with law enforcement. Accordingly, the department may withhold the information it marked under section 552.108(b)(1) of the Government Code.

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. The department states the City of Beaumont is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files relating to a police officer: a police officer’s civil service file the civil service director is required to maintain, and an internal file the police department may maintain for its own use. 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 which the police department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(3).

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).⁵ *Abbott v. City of 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 in possession of the police 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 an officer’s alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov’t Code § 143.089(b). In addition, a document relating to disciplinary action against a police officer that has been placed in the officer’s personnel file as provided by section 143.089(a)(2) must be removed from the officer’s file if the civil service commission finds the disciplinary action was taken without just cause or the charge

⁵Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. Local Gov’t Code §§ 143.051-.055.

of misconduct was not supported by sufficient evidence. *See id.* § 143.089(c). Information that reasonably relates to an 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. *See 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. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

The department asserts portions of the IA Pro printouts, or use of force reports, in the remaining information at issue in Exhibit B are excepted under section 143.089(g). The department states the information it has marked in these use of force reports is maintained exclusively in the department's internal files pursuant to section 143.089(g). Furthermore, the department states, and the submitted documents reflect, the information it has marked relates to incidents wherein no disciplinary action was taken against any officers. As the department acknowledges, use of force reports were the subject of prior litigation between the City of Beaumont and this office. *See City of Beaumont v. Abbott, Attorney Gen. of Tex.*, No. D-1-GV-07-002630 (345th Dist. Ct., Travis County, Tex., Oct. 26, 2010). As part of the subsequent settlement agreement, the parties agreed the IA Pro printouts were not confidential under section 143.089(g) in their entirety. Instead, the parties agreed that only portions of the printouts were confidential under this section. *See id.* (IA Pro printouts, as redacted by this office, subject to disclosure). Upon review, we agree the information the department has marked in Exhibit B 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 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, this office has found the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job). Upon review, we find none of the remaining information is confidential under common-law privacy, and thus, the department may not withhold any of it under section 552.101 of the Government Code on that ground.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, emergency contact

information, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information it marked under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the department must withhold the motor vehicle record information it marked under section 552.130 of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2014-22940 as a previous determination and withhold or release the information it has indicated in Exhibit B in accordance with that ruling. The department may withhold the information it marked under section 552.108(b)(1) of the Government Code. The department must withhold the information it has marked in the remaining information in Exhibit B 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 it has marked under section 552.117(a)(2) of the Government Code. The department must withhold the motor vehicle record information it has 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.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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 555582

Enc. Submitted documents

c: Requestor
(w/o enclosures)