



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 19, 2015

Ms. Amy L. Sims
Deputy City Attorney
Office of the City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2015-05338

Dear Ms. Sims:

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# 556864.

The City of Lubbock (the "city") received a request for (1) specified e-mail communications between two named individuals; (2) information pertaining to a specified case number; (3) employee grievance information; (4) specified reports regarding hiring practices of the Lubbock Police Department (the "department"); and (5) information pertaining to citations issued on a specified date. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code. We have considered the exceptions 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. 2014-12865 (2014), 2014-12869 (2014), and 2014-14495 (2014). In Open Records Letter Nos. 2014-12865 and 2014-14495, we determined 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. 2014-12869, we determined the city failed to comply with the procedural requirements of section 552.301(b) of the Government Code, and, thus, the city waived its claim under section 552.103 of the Government Code. We further found the city must withhold the information we marked under (1) section 552.101 of the Government Code in conjunction with the MPA, (2) under section 552.101 of the Government Code in conjunction with

common-law privacy, (3) to the extent the individual at issue was currently a licensed peace officer, under section 552.117(a)(2) of the Government Code, (4) to the extent the information did not pertain to a licensed peace officer, and to the extent the employee at issue timely elected to keep such information confidential, under section 552.117(a)(1) of the Government Code, and must release the remaining information. As we have no indication the law, facts, and circumstances on which the prior rulings were based have changed, the city must continue to rely on Open Records Letter Nos. 2014-12865, 2014-12869, and 2014-14495 as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings.¹ *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 that information is or is not excepted from disclosure). We will address your arguments against disclosure of the submitted information that is not encompassed by Open Records Letter Nos. 2014-12865, 2014-12869, and 2014-14495.

Next, the city informs us a portion of the submitted information was subject to a subpoena and released pursuant to a court order. If a governmental body voluntarily releases information to a member of the public, such information may not later be withheld from release to the public unless it is confidential under law. Gov't Code § 552.007. We note, however, that the release of the information at issue pursuant to a court order is not a voluntary release of information for purposes of section 552.007. *See* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor of section 552.007), 454 at 2 (1986) (where governmental body disclosed information because it reasonably concluded it had constitutional obligation to do so, it could still invoke law enforcement exception). We will therefore address the city's arguments for the remaining submitted information not encompassed by the previous rulings.

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 143.089 of the Local Government Code. We understand the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files for police officers in a civil service city: a 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 department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(3). Chapter 143 prescribes

¹As our ruling is dispositive, we need not address your arguments against disclosure of this information.

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 chapter 143 of the Local Government Code).

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. 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 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 are subject to release under the Act. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information 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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

We note Exhibit C consists of an internal investigation of alleged misconduct on the part of department officers and Exhibit H consists of an officer grievance. You inform us no disciplinary action has resulted from the investigation or grievance. You claim the information at issue is excepted from disclosure under section 143.089(g), as information that should be maintained in the department's internal files pursuant to section 143.089(g). Upon review, we agree Exhibits C and H are confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.² *See generally* Attorney General Opinion JC-0257.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state the information in Exhibit F pertains to a concluded investigation that did not result in a conviction or deferred adjudication. Based on the submitted representations and our review, we conclude section 552.108(a)(2) of the Government Code is applicable to Exhibit F.

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Basic information refers to the information held to

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [[14th Dist] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Accordingly, with the exception of basic information, the city may withhold Exhibit F under section 552.108(a)(2) of the Government Code.

Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The city must withhold the e-mail addresses you have marked in Exhibit K under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release.

In summary, the city must continue to rely on Open Records Letter Nos. 2014-12865, 2014-12869, and 2014-14495 as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. The city must withhold Exhibits C and H under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. With the exception of basic information, the city may withhold Exhibit F under section 552.108(a)(2) of the Government Code. The city must withhold the e-mail addresses you have marked in Exhibit K under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release. The city 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, 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# 556864

Enc. Submitted documents

c: Requestor
(w/o enclosures)