



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 31, 2015

Ms. Sandra Kim
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2015-15686

Dear Ms. Kim:

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# 576985 (PIR# 812436).

The Austin Police Department (the "department") received a request for information pertaining to a specified officer-involved shooting. You state the department will release some responsive information to the requestor. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you state some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-10202 (2015). In Open Records Letter No. 2015-10202, we determined (1) the City of Austin (the "city") may withhold the information it marked under section 552.107(1) of the Government Code; (2) with the exception of basic information, the city may withhold the records it

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

marked under section 552.108(a)(1) of the Government Code; and (3) the remaining information must be released. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the department may continue to rely on Open Records Letter No. 2015-10202 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address your argument against release of the information that is not encompassed by Open Records Letter No. 2015-10202.

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 requires a civil service city to maintain two different types of personnel files relating to a police officer: a police officer’s civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov’t Code § 143.089(a), (g). Information that reasonably relates to an officer’s employment relationship with the police department is maintained in a police department’s internal file pursuant to section 143.089(g) and is confidential and must not be released. *See id.* § 143.089(g) (“[T]he department may not release any information contained in the department file to any agency or person requesting information relating to a . . . police officer.”); *see also 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). You state the remaining information is maintained only in the department’s confidential internal file for the officer in question pursuant to section 143.089(g). Based on your representation and our review, we conclude the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

In summary, the department may continue to rely on Open Records Letter No. 2015-10202 as a previous determination and withhold or release the identical information in accordance with that ruling. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

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,

A handwritten signature in black ink, appearing to read 'Brian E. Berger', written over a faint, illegible typed name.

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 576985

Enc. Submitted documents

c: Requestor
(w/o enclosures)