



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 18, 2015

Mr. James Kopp
Assistant City Attorney
City of San Antonio
Office of the City Attorney
315 South Santa Rosa, 6th Floor
San Antonio, Texas 78207

OR2015-17122

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# 575988 (COSA File No. W084947).

The City of San Antonio (the "city") received a request for the personnel file of a named city police department officer. You state the city has released and will release some of the requested 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, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database and may be used as an access device number on the TCOLE website. Accordingly, we find the officer's TCOLE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act and need not be released to the requestor.¹

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. Section 552.101 encompasses information protected by 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 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)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143. *See* Attorney General Opinion JC-0257. 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.).

¹As we are able to make this determination, we need not address your argument against the disclosure of this information.

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. 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* 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 (2000) (addressing functions of Local Gov’t Code § 143.089(a) and (g) files).

You state the submitted information is maintained only in the city police department’s internal personnel file for the named officer under section 143.089(g). We note internal affairs case number FC2014-116 relates to misconduct that resulted in disciplinary action pursuant to section 143.089. We further note the submitted information contains commendations and periodic evaluations by the named officer’s supervisors, which we have marked. Thus, while the information pertaining to internal affairs case number FC2014-116 and the commendations and periodic evaluations we have marked may be kept in the internal file maintained under subsection 143.089(g), they must also be kept in the civil service

personnel file maintained under subsection 143.089(a). *See* Local Gov't Code § 143.089(a)(2). In this instance, the request was received by the city, which has access to the files maintained under both subsections 143.089(a) and 143.089(g); therefore, the request encompasses both of these files. Accordingly, the city may not withhold the information pertaining to internal affairs case number FC2014-116 and the commendations and periodic evaluations we have marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Upon review, we find the remaining information is confidential under section 143.089(g) of the Local Government Code. Accordingly, the city must generally withhold the remaining information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

We note, however, the remaining information includes accident reports governed by section 550.065 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). Act of June 1, 2015, 84th Leg., R.S., H.B. 2633, § 1 (to be codified at Transp. Code § 550.065(c), (c-1)). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. Gov't Code § 550.065(c). Here, the requestor is a person listed under section 550.065(c). As such, this requestor has a right of access to the accident reports pursuant to section 550.065(c).

Thus, there is a conflict between the confidentiality under section 143.089(g) of the Local Government Code and the right of access to the accident reports provided to this requestor under section 550.065(c) of the Transportation Code. Where information falls within both a general and specific statutory provision, the specific provision prevails over the general statute, unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, we find section 143.089(g) of the Local Government Code generally applies to a police department's internal files. Section 550.065(c) of the Transportation Code, however, applies specifically to accident report forms. Accordingly, we find the right of access provided to this requestor under section 550.065(c) prevails over the general confidentiality of section 143.089(g). Therefore, the city must release the accident reports, which we have marked, to this requestor under section 550.065(c) of the Transportation Code. With the exception of the information pertaining to internal affairs case number FC2014-116 and the commendations and periodic evaluations we have marked, the city 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.²

In summary, the TCOLE identification number is not subject to the Act and need not be released to the requestor. The city must release the accident reports we have marked to this requestor under section 550.065(c) of the Transportation Code. With the exception of the information pertaining to internal affairs case number FC2014-116 and the commendations and periodic evaluations we have marked, which must be released, the city 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/cbz

Ref: ID# 575988

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not consider your remaining argument against disclosure.