



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 12, 2015

Ms. Linda Pemberton  
Paralegal  
Office of the City Attorney  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76542-1329

OR2015-23801

Dear Ms. Pemberton:

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# 586814 (ORR# W017115).

The Killeen Police Department (the "department") received a request for the requestor's personnel file and a specified internal affairs investigation. The department also states it has released some of the requested information, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, the department informs us the submitted information pertaining to the requested internal affairs investigation was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-18175 (2015). In Open Records Letter No. 2015-18175, we determined the department must withhold this information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the department must continue to rely on Open Records Letter No. 2015-18175 as a previous determination and withhold the requested internal affairs investigation information in accordance with that ruling.<sup>1</sup> We will address the department's arguments against the release of the submitted information not encompassed by Open Records Letter No. 2015-18175.

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<sup>1</sup>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).

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 excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. The department states the City of Killeen is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: 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). 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).<sup>2</sup> *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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

The department states the information at issue is contained in the department’s internal files created pursuant to section 143.089(g). Based on these representations, we agree this information is generally confidential under section 143.089(g).

However, we note some of the submitted information is subject to section 552.140 of the Government Code, which provides, in part, the following:

(a) This section applies only to a military veteran’s Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

(b) The record is confidential for the 75 years following the date it is recorded with or otherwise first comes into the possession of a governmental body. During that period the governmental body may permit inspection or copying of the record or disclose information contained in the record only in accordance with this section or in accordance with a court order.

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<sup>2</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055.

(c) On request and the presentation of proper identification, the following persons may inspect the military discharge record or obtain from the governmental body free of charge a copy or certified copy of the record:

(1) the veteran who is the subject of the record[.]

Gov't Code § 552.140(a), (b), (c)(1). Section 552.140 provides a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). The submitted information includes a DD-214 form of the requestor that came into the department's possession after September 1, 2003. Section 552.140(c)(1) provides a governmental body must release a discharge form to the veteran who is the subject of the record upon request and presentation of proper identification. *Id.* § 552.140(c)(1). Accordingly, the requestor has a right of access to his DD-214 form under section 552.140(c)(1) of the Government Code.

The submitted information also includes the requestor's fingerprints. Chapter 560 of the Government Code provides a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). The submitted fingerprint information is generally confidential under section 560.003. Nevertheless, the requestor has a special right of access to his own fingerprint information. *See id.* § 560.002(1).

Therefore, there is a conflict between the confidentiality provision of section 143.089(g) of the Government Code and the access provisions of sections 552.140(c)(1) and 560.002 of the Government Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See id.* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); *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.). Although section 143.089(g) of the Local Government Code applies generally to all records in a personnel file, section 552.140 specifically applies to military discharge records, and chapter 560 of the Government Code applies specifically to biometric identifiers. Thus, we find sections 552.140 and 560.002 of the Government Code are more specific than the confidentiality provision of section 143.089(g). Accordingly, the department must release the submitted DD-214 form pursuant to section 552.140(c)(1) of the Government Code and the requestor's fingerprints, which we have marked, pursuant to section 560.002 of the Government Code. Nevertheless,

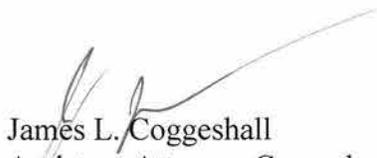
the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

To conclude, the department must continue to rely on Open Records Letter No. 2015-18175 as a previous determination and withhold the requested internal affairs investigation information in accordance with that ruling. The department must release the submitted DD-214 form pursuant to section 552.140(c)(1) of the Government Code and the requestor's fingerprints, which we have marked, pursuant to section 560.002 of the Government Code.<sup>3</sup> 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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bhf

Ref: ID# 586814

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold certain categories of information, including a DD-214 form under section 552.140 of the Government Code and fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, without the necessity of requesting an attorney general decision. Thus, if the department receives another request for this information from a different requestor, the department may redact the DD-214 form and fingerprints at issue without requesting a ruling from this office.