



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 31, 2016

Ms. Deborah Pollum  
Assistant City Attorney  
City of Tyler  
P.O. Box 2039  
Tyler, Texas 75710

OR2016-12296

Dear Ms. Pollum:

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# 610595 (Ref. No. PEF-242152).

The Tyler Police Department (the "department") received a request for information pertaining to a named former department officer. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.142 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has asked the department to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the department has made a good faith effort to relate the

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<sup>1</sup>We understand the department to raise section 552.117 of the Government Code based on its markings in the submitted documents. Although the department also raises section 552.101 of the Government Code in conjunction with constitutional privacy for the submitted information, the department provides no arguments explaining how this doctrine is applicable to the information at issue. Therefore, we assume the department no longer asserts this doctrine. *See* Gov't Code §§ 552.301, .302.

questions asked by the requestor to information held by the department. Accordingly, we will address your arguments against disclosure of the submitted information.

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. The department states the City of Tyler 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)-(3). Chapter 143 prescribes 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 Local Gov’t Code chapter 143). 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.).

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.* § 143.089(g). 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 City of San Antonio*, 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).

The department states some of the submitted information is contained within the named former officer's internal files maintained pursuant to section 143.089(g) of the Local Government Code. Upon review, we find the information you have marked is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.<sup>2</sup>

You raise section 552.142 of the Government Code for the remaining information. Section 552.142 is applicable to records of certain deferred adjudications. You explain, and have provided documentation reflecting, an order of nondisclosure was issued pursuant to former section 411.081(d) of the Government Code. You assert this order applies to the remaining information. We note the submitted order of nondisclosure was issued prior to September 1, 2015. Although section 552.142 of the Government Code was amended in 2015 by the 84th Legislature, an order of nondisclosure issued pursuant to former section 411.081(d) prior to September 1, 2015, is subject to the former version of section 552.142, which was continued in effect for that purpose. *See* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 32, Tex. Gen. Laws 4327, 4339. Thus, we will address your argument under the former version of section 552.142 of the Government Code, which provides as follows:

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<sup>2</sup>As our ruling is dispositive, we need not address the department's remaining arguments against disclosure of this information.

(a) Information is excepted from [required public disclosure] if an order of nondisclosure with respect to the information has been issued under [former] Section 411.081(d).

(b) A person who is the subject of information that is excepted from [required public disclosure] under this section may deny the occurrence of the arrest and prosecution to which the information relates and the exception of the information under this section, unless the information is being used against the person in a subsequent criminal proceeding.

Act of June 1, 2003, 78th Leg., R.S., ch. 1236, § 5, 2003 Tex. Gen. Laws 3502, 3504, *amended by* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, §§ 26-27, Tex. Gen. Laws 4327, 4338 (current version at Gov't Code § 552.142). We note although Senate Bill 1902 amended and redesignated former subsections 411.081(d) through (i) of the Government Code, the former versions of these subsections were continued in effect for that purpose. *See* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 32, Tex. Gen. Laws 4327, 4339. Former section 411.081(d) of the Government Code authorizes a person placed on deferred adjudication for certain offenses to petition the court for an order of nondisclosure, which prohibits criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication. *See* Act of June 1, 2003, 84th Leg., R.S., ch. 1236, § 3, Tex. Gen. Laws 3502, 3503, *amended by* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 4, Tex. Gen. Laws 4327, 4328 (current version at Gov't Code § 411.0725(b)-(e)). Under this provision, a criminal justice agency may only disclose criminal history record information that is the subject of the order to other criminal justice agencies, for criminal justice or regulatory purposes; non-criminal justice agencies listed in former section 411.081(i); or the person who is the subject of the order. *See* Act of June 1, 2003, 84th Leg., R.S., ch. 1236, § 3, Tex. Gen. Laws 3502, 3503 (amended 2015).

Upon review, we find most of the remaining information, which we have marked, is subject to the order of non-disclosure. You do not indicate the requestor is an entity or individual entitled to receive information protected by former section 411.081(d). Therefore, the department must withhold the information we have marked under former section 552.142 of the Government Code.<sup>3</sup> However, we find the remaining information is not subject to the order of nondisclosure. Thus, the department may not withhold any of the remaining information under former section 552.142 of the Government Code.

We note the remaining information contains information subject to section 552.136 of the Government Code, which provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or

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<sup>3</sup>As our ruling is dispositive, we need not address the department’s remaining arguments against disclosure of this information.

maintained by or for a governmental body is confidential.”<sup>4</sup> Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the department must withhold the account number we have marked under section 552.136 of the Government Code.

In summary, the department must withhold the information you have marked 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 we have marked under former section 552.142 of the Government Code. The department must withhold the account number we have marked under section 552.136 of the Government Code. The department 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](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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/bw

Ref: ID# 610595

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).