



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2016

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2016-12666

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# 612994 (ORR No. W018740).

The City of Killeen (the "city") received a request for information pertaining to a named officer. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the Bell County District Attorney's Office (the "district attorney's office"). *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note the submitted information contains information subject to section 552.022 of the Government Code, which provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[and]

...

(17) information that is also contained in a public court record[.]

Id. § 552.022(a)(1), (17). The submitted information contains completed reports and evaluations which are subject to section 552.022(a)(1) and court-filed documents that are subject to section 552.022(a)(17). The city must release the information subject to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). The city must release the information subject to section 552.022(a)(17), which we have marked, unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(17). Although the district attorney's office seeks to withhold the information subject to section 552.022 under section 552.103 of the Government Code, and the city and the district attorney's office seek to withhold the information subject to section 552.022(a)(17) under section 552.108 of the Government Code, these sections are discretionary exceptions to disclosure and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold the information subject to section 552.022 under section 552.103 or the court-filed documents under section 552.108 of the Government Code. However, the city also raises section 552.101 of the Government Code for the court-filed documents, which makes information confidential under the Act. Accordingly, we will address the applicability of this section to the information at issue. Further, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will address the assertion of section 552.108 for the information subject to section 552.022(a)(1). Additionally, we will address the arguments for the information that is not subject to section 552.022.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the information at issue consists of personnel file records pertaining to the named officer. Section 552.108 is generally not applicable to the that are purely administrative in nature and that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982).

However, you and the district attorney's office state the submitted information is related to a pending criminal investigation being conducted by the district attorney's office, and release of the information at issue would interfere with the detection, investigation, and prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on these representations, we find the city may withhold the remaining information not subject to section 552.022(a)(17) under section 552.108(a)(1) of the Government Code.¹

Next, we address your argument under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code for the information subject to section 552.022(a)(17) of the Government Code. 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 section 143.089 of the Local Government Code, which contemplates two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. *See* 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)-(2). 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 (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). 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).

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

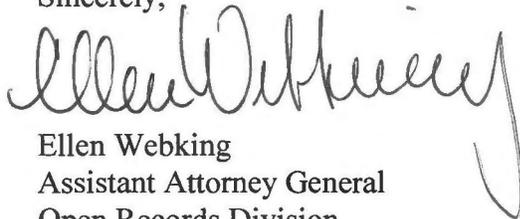
You state the city is a civil service city under chapter 143 of the Local Government Code. You state the information at issue is contained in the city police department's internal file pursuant to section 143.089(g). Based on the city's representations and our review, we agree the information at issue is confidential pursuant to section 143.089(g) of the Local Government Code. Accordingly, the city must withhold the information subject to section 552.022(a)(17) of the Government Code under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

In summary, the city may withhold the information not subject to section 552.022(a)(17) under section 552.108(a)(1) of the Government Code. The city must withhold the information subject to section 552.022(a)(17) of the Government Code 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 612994

Enc. Submitted documents

c: Requestor
(w/o enclosures)