



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

July 19, 2016

Mr. Les Moore  
Police Legal Advisor  
Irving Police Department  
305 North O'Connor Road  
Irving, Texas 75061

OR2016-16289

Dear Mr. Moore:

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# 620917.

The City of Irving (the "city") received four requests for all written information and video recordings of a specified incident involving a named individual on a specified date. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 section 143.089 of the Local Government Code. We understand Irving 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 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). 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 (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 there is insufficient evidence to sustain the charge of misconduct or 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 (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You assert the submitted information is maintained in the city’s police department’s (the “department”) internal personnel file for a specified officer under section 143.089(g). You state the information at issue relates to an internal investigation that did not result in disciplinary action. However, the submitted information includes information that may also be maintained independently from the officer’s personnel file. The present request does not specifically seek information from the officer’s personnel file. Instead, the requestor seeks information related to a specified incident involving a named individual. Because the requestor generally asks for information about the specified incident, both the officer’s personnel file and any copies of investigatory materials the city maintains for law enforcement purposes are responsive. The city may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Accordingly, we find the information that is maintained solely in the department’s internal file is confidential under section 143.089(g) and must be withheld under section 552.101 of the Government Code.<sup>1</sup> However, the submitted information that is also maintained independently of the department’s internal file is not confidential under section 143.089(g) and may not be withheld under section 552.101 of the Government Code on that basis. We will therefore consider your additional argument against disclosure with respect to the responsive information maintained independent of the internal file.

Section 552.108(b)(2) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if: . . . (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(b)(2). A governmental body claiming section 552.108(b)(2) must demonstrate the information at issue relates to an investigation that did not result in conviction or deferred adjudication. *See id.* § 552.301 (e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information pertains to an investigation that did not result in a conviction or deferred adjudication. Based on your representation, we agree section 552.108(b)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the city may withhold the remaining information under section 552.108(b)(2) of the Government Code.

In summary, the city must withhold the information that is maintained solely in the department's internal investigative file under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. With the exception of the basic information, the city may withhold the remaining information under section 552.108(b)(2) of the 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,



Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/dls

Ref: ID# 620917

Enc. Submitted documents

c: 4 Requestors  
(w/o enclosures)