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August 17, 2017

Honorable Ken Paxton  
Texas Attorney General  
ATTN: Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

**Certified Mail No.:** 7012 3050 0000 3713 8424

Re: City of Fort Worth Public Information Request No. W063985 from Alexander Cartwright  
Request for Records Regarding Citizen Complaints, Peer Complaints, Number of Calls  
and Officer-involved Shootings

Dear Attorney General Paxton:

On July 31, 2017, the City of Fort Worth (the "City") received written requests from Alexander Cartwright (the "requestor") for Records Regarding Citizen Complaints, Peer Complaints, Number of Calls and Officer-involved Shootings. Exhibit "A" contains a certification of the date the City received this request. A copy of the request is included as Exhibit "B." On August 14, 2017, the City requested a ruling from your office

The City will provide the requestor with a portion of the information responsive to the request. However, the City believes that the remaining responsive records are excepted from disclosure under section 552.101 of the Texas Government Code in conjunction with section 143.089(g) of the Texas Local Government Code. Therefore, in accordance with section 552.301 of the Texas Government Code, the City is requesting a decision from your office. Exhibits "C" and "D" contain the information at issue, or a representative sample thereof. Exhibits "E," "F," "G," and "H" are included for informational purposes only.

I.  
PREVIOUS DETERMINATION

Some of the information responsive to the request is the subject of a previous determination by your office. On January 5, 2017, the City requested a ruling from your office with regard to seventeen Public Information Act requests that the City received regarding use of force pertaining to named officers. Your office assigned the request for a ruling AG ID# 648631. On March 13, 2017, your office issued Open Records Letter No.2017-05226. In that ruling your office determined that the City could withhold information it submitted under section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code. The City is submitting a portion of the information to your office that was previously considered by your office in OR2017-05226 because the circumstances are different. In this case, the

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requestor is not exclusively seeking use of force reports, but rather, any complaint made against any officer for a 10-year period of time. However, the City still believes that the responsive records are confidential by law, and are therefore excepted from disclosure, under section 552.101 of the Texas Government Code in conjunction with section 143.089(g) of the Local Government Code.

**Records pertaining to investigations that did not result in discipline are confidential.**

Section 552.101 of the Texas Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes, such as section 143.089 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.* at § 143.089(a)(1)-(3). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* at §§ 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 id.* a § 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 (addressing functions of Local Gov't Code§ 143.089(a) and (g) files).

The City is a civil service city under chapter 143 of the Local Government Code. The Fort Worth Police Department has informed my office that the Department's approach to reporting use of citizen complaints has evolved over time. Before 2015, detectives in internal affairs would log all complaints made by citizens in the Citizen Complaint log. If a complaint warranted further investigation, the complaint was logged into the IA Pro software system. Beginning in 2015, the citizen complaint log was abolished and all complaints by citizens were logged into the IA Pro software system. A copy of the citizen complaint log is attached as Exhibit "C." Peer complaints have always been logged into the Police Department's internal affairs software and investigated by internal affairs.

During 2012, the Police Department implemented the IA Pro software system. The IA Pro system contains the Blue Team reporting module which allows for the electronic creation of complaint documents. After entering the information regarding a either a citizen complaint or a peer complaint into the IA Pro system, an electronic complaint report and a summary of the complaint are generated within the IA Pro system. Copies of the complaint forms are closed as informational Exhibit "F." Copies of the complaint summaries are enclosed as informational Exhibit "E." The complaint forms are linked to and accessible from the summaries. The IA Pro system is searchable by an officer's name or incident type. In order to for the City to ascertain the information responsive to the requestor's first and second requests, the City had to search for all complaints and run a report. The search results generated the reports in Exhibit "D." However, the reports contain all complaints, including those that did not result in discipline under Chapter 143.

Complaints forms and summaries contain a summary of incident and identification of the officers, citizens and witnesses involved. Complaint forms and summaries are reviewed by an officer's chain of command. The review is conducted to determine whether the complaint against the officer violated the City's policies. The complaint forms and summaries indicate the

determination by each member in the officer's chain of command of whether the activity complained of was in compliance with the Department's policies. If a determination is made by the chain of command that the activity does not comply with the Department's policies, an internal affairs investigator can be assigned to investigate the incident and upon conclusion of the investigation, the chain of command can make recommendations for disciplining the officer. Complaints forms and summaries can contain the recommendations of the chain of command.

The complaints forms and summaries are maintained in different locations within the IA Pro system depending upon the status of the review of the officer's conduct and the conduct. If the complaint involves a use of force, those forms, are maintained in the use of force sub-module if no policy violations are found. If there is a belief that a policy violation may have occurred, the use of force summary and the corresponding use of force form are moved to the Complaint sub-module. If an allegation is sustained against the officer, regardless of whether discipline is imposed, then the summary and corresponding use of force form is maintained in the Discipline sub-module.

In addition to a review for compliance with City policies, if the complaint involves a use of force, the Police Department's General Orders require use of force reports to be reviewed by Deputy Chiefs to determine if there is a need for changes in departmental procedures, additional training for the officer or a referral to the department psychologist. All use of force reports are also required by the General Orders to be forwarded to the Police Department's Training Division to review to ensure that the Training Division has the most current information available with regard to training methods and curriculums. The General Orders also allow a specific use of force incident to be evaluated by the Training Division. The General Orders further require Assistant Chiefs to conduct periodic audits of use of force incidents to ensure that the objectives of management review are being met. Copies of the versions of the Police Department's General Orders for reporting use of force incidents are enclosed as Exhibit "G." A copy of the Police Department's General Orders that require use of force forms to be maintained in an officer's personnel file that is maintained in accordance with subsection 143.089(g) are enclosed as Exhibit "H."

The only individuals who have access to the complaint forms, use of force forms and summaries are an officer's chain of command, the internal affairs unit, and the training division. Paper copies of use of force summaries and forms are generally not maintained by the Police Department. Old copies of use of force forms that have not yet been scanned into the IA Pro software system are still in existence. The Internal Affairs division maintains copies of use of force forms and summaries on incidents that have been referred to the division for investigation because a formal complaint has been filed against an officer for alleged violations of department policy. In addition, copies of use force forms and summaries that resulted in discipline in accordance with chapter 143 of the Local Government Code are maintained in the officer's civil service file in accordance with subsection 143.089(a).

The Fort Worth Police Department asserts that citizen complaint log and the reports contained in Exhibits "C" and "D" involve incidents that did not result in discipline under chapter 143 of the Local Government Code and are therefore confidential pursuant to section 143.089(g). This information relates to the department's review of incidents involving complaints made by either citizens or peers to determine whether the officer's complied with the Police Department's

policies. This information further contains results of the investigation and recommendations by the officer's chain of command on whether additional training or discipline is necessary for the police officer. Therefore, this information is reasonably related to a police officer's employment relationship. In addition, while the officer's chain of command, the Training Division and the Internal Affairs Division have access to the information, the access to the information is made for the Police Department's use as authorized by section 143.089(g).

The Fort Worth Police Department further asserts that only those use of force forms and summaries that involve incidents that resulted in discipline become part of an officer's civil service file maintained in accordance with subsection 143.089(a). To the extent your office determines that the log and reports contained in Exhibits "C" and "D" are administrative files and not personnel files, the Fort Worth Police Department asserts that the portions of the log and report showing the chain of command's review, conclusions and recommendations on incidents that did not result in discipline under chapter 143 are confidential under section 143.089(g) and must be withheld under section 552.101 of the Government Code.

Respectfully submitted,



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Attachment

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