



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Ms. Helen M. Gros
Division Chief of General Counsel
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR94-351

Dear Ms. Gros:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 24537.

The City of Houston (the "city") has received a request for the personnel files of six city police officers. You contend some of the requested information is excepted from required public disclosure under sections 552.101, 552.115, and 552.117 of the act.

We begin by addressing section 552.101 of the act, which excepts information made confidential by statute, and the applicability of section 143.089(g) of the Local Government Code to the requested files. Section 143.089(g) provides:

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.

Recently, in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by a city police department for its use. It suggested that such information is confidential and excepted from disclosure under the act, but that an officer's civil service file may be subject to disclosure under the act. It is not clear whether the information you have submitted is derived from personnel files or civil service files. Thus, we are unable to determine the applicability of section 143.089(g) to the requested information. Because the department is required to refer any person who requests information maintained in an officer's personnel file to the civil service commission, however, we will treat this request as a request for civil service files. Again, civil service files are not confidential under section 552.101 and are subject to disclosure under the act if no exception to required public disclosure applies. *See* Open Records Decision No. 562 (1990).

First, you state that you have redacted the officers' current and former home telephone numbers and home addresses and social security numbers pursuant to section 552.117(1)(B). That provision makes confidential a peace officer's current and former home addresses and telephone numbers, *see* Open Records Decision No. 622 (1994), but it does not make confidential his or her social security number. Nor is a social security number confidential under the common law. *See id.* at 2. A social security number or "related record" may be excepted from required public disclosure under section 552.101 of the act in conjunction with the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), however, if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622; *see also* 42 U.S.C. § 405 (c)(2)(C)(v) (governing release of social security number collected in connection with the administration of any general public assistance, driver's license, or motor vehicle registration law). Based on the information you have provided, we are unable to determine whether the social security numbers at issue are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the city should ensure that the information is not confidential under federal law. If it is not confidential under federal law, it must be released.

Next, you assert that the officers' birth certificates are excepted from required public disclosure under section 552.115 of the act. That provision makes confidential only those birth and death records maintained by the Bureau of Vital Statistics of the Texas Department of Health. It does not make confidential records in the possession of any other person or entity. Therefore, the officers' birth certificates may not be withheld under section 552.115.

You also assert that records relating to disciplinary actions taken against the officers that were rescinded or overturned on appeal are confidential under section 552.101 of the act, which excepts information which is confidential by statute, and section 143.089(c) of the Local Government Code. You have submitted records relating to two disciplinary actions. In one case, the disciplinary action was overturned by an arbitrator. This office is currently considering whether civil service file records regarding disciplinary actions overturned on appeal or by a hearing examiner are confidential under recently enacted section 143.1214 of the Local Government Code (RQ-688). We are unable to determine the public availability of such records at this time.¹

In the other case, the disciplinary action, a one-day temporary suspension, was rescinded by the chief of police, and replaced with a written reprimand. Section 143.1214 does not apply to a disciplinary action that has been rescinded and replaced with another disciplinary action by the chief of police. Section 143.089 provides for the removal from civil service files of records relating to disciplinary actions that the commission determines were taken without just cause or were not supported by sufficient evidence.² See Local Gov't Code § 143.089(c). That does not appear to be the case with these records. Therefore, we conclude that the city has not demonstrated that civil service file records regarding the rescission and replacement of the disciplinary action are confidential.

In addition, you assert that certain information in a document regarding an officer's family and his acceptance of outside employment is confidential under section 552.101 and the doctrine of common-law privacy. In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court concluded that section 552.101 of the act protects from

¹If the requestor continues to be interested in obtaining such records, we suggest that he resubmit his request to the city.

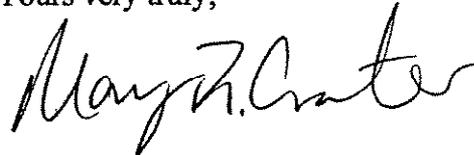
²In *City of San Antonio*, the court determined that section 143.089(g) made confidential records included in the personnel file related to complaints against a police officer for which no disciplinary action was taken. *City of San Antonio*, 851 S.W.2d at 949. The *City of San Antonio* court, however, did not comment on the availability of information contained in the police officer's civil service file. In cases in which a police department takes disciplinary action against a police officer, section 143.089(a)(2) requires that the department transfer records relating to the disciplinary action to the city civil service commission. These records may not be withheld under section 552.101 of the Government Code. Open Records Decision No. 562 (1990); see also Local Gov't Code § 143.089(f). Thus, if an investigation does not result in disciplinary action, the file must be withheld from required public disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. On the other hand, if an investigation does result in disciplinary action, then all the documents relating to the disciplinary action must be transferred to the civil service commission as required by section 143.089(a)(2) of the Local Government Code and must be released by the civil service commission under section 143.089(f) of the Local Government Code unless some provision of the Open Records Act or other law permits the commission to withhold the documents. Open Records Decision No. 562 (1990) at 6.

required public disclosure information the release of which would constitute the common-law tort of invasion of privacy. In order to be excepted from required public disclosure under the doctrine of common-law privacy, records must contain highly intimate or embarrassing information about a person's private affairs and be of no legitimate concern to the public. *Id.* at 685. We agree that the information relating to the officer's family is highly intimate and embarrassing and that it is of no legitimate public interest. It must be withheld. We believe, however, that information revealing the details of the officer's outside employment is not highly intimate or embarrassing and is of legitimate public interest. *See* Open Records Decision No. 484 (1987). Therefore, this information must be released. We have marked the document accordingly.

Finally, you assert that the officers' W-4 tax withholding forms are confidential under federal law. We agree. *See* Open Records Decision No. 600 (1992) at 8-9. The W-4 forms must be withheld.

If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/KKO/rho

Ref.: ID# 24537

Enclosures: Marked documents

cc: Mr. Norm Silverman
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(w/o enclosures)