



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 25, 1994

Mr. Robert Rose
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR94-405

Dear Mr. Rose:

You seek reconsideration of Open Records Letter No. 90-463 (1990), in which this office determined that sections 552.103(a) and 552.108 of the Texas Open Records Act (the "act"), Government Code chapter 552,¹ did not except certain information from required public disclosure. We have assigned your request for reconsideration ID# 25277 (formerly ID# 10901).

You seek to withhold from required public disclosure a report of the Austin Police Department Internal Affairs Department in regard to Officer Bubba Cates. You no longer seek to withhold this information under sections 552.103(a) and 552.108 of the Government Code, but claim that section 552.101 excepts the requested report from required public disclosure.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with section 143.089(g) of the Local Government Code. 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.

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

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. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. 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, the department is required by section 143.089(a)(2) to transfer "any record, memorandum, or document relating to" the disciplinary action to the city civil service commission. These records may not be withheld under section 552.101 of the act. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990).

You have not submitted the requested internal affairs investigation file to us for review. Accordingly, we are unable to determine whether the internal affairs investigation resulted in disciplinary action. We conclude that, if the investigation did 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. If the internal affairs investigation file did result in disciplinary action, then "any record, memorandum, or document 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.²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

²This office assumes that the city, in compliance with section 143.089(g), will in this instance refer the requestor to the director of civil service for the records maintained by that branch of the city.

Ref: ID# 24277
ID# 10901

cc: Mr. David H. Donaldson, Jr.
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