



August 25, 2000

Mr. Samith C. Hill  
Chief of Police  
Forest Hill Police Department  
3336 Horton Road  
Forest Hill, Texas 76119

OR2000-3251

Dear Mr. Hill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138339.

The Forest Hill Police Department (the "department") received a request for several items of information regarding a named police officer. You responded, apparently providing the information to the requestor. The requestor claims that the information you provided in response to her request for the "name of the law enforcement training academy" which the named officer attended and "time upon completion" was not responsive, but was instead the college the officer attended and his graduation date. You now claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office sufficient evidence of the date you received the request for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision Nos. 319 (1982), 150 (1977) (presumption can be overcome only by compelling demonstration that information should not be released, e.g., where it is made confidential by other law, or where third party interests are at issue). You claim that the requested information is excepted from required public disclosure by sections 552.101 and 552.102, which may provide compelling reasons to overcome the presumption that the information at issue is public.

You claim that the information is confidential under section 552.101 in conjunction with chapter 143 of the Local Government Code. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You inform us that Forest Hill has adopted chapter 143 of the Local Government Code and represent that the submitted information is part of the departmental file that is created and maintained pursuant to section 143.089(g) of the Local Government Code. Section 143.089(g) reads 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 [of the civil-service commission] 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.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] 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." Local Gov't Code § 143.089(g); *see City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 952 (Tex. App.--Austin 1993, writ denied).

The court in *City of San Antonio* addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. *City of San Antonio*, 851 S.W.2d at 946 (in construing section 143.089 the court found general legislative policy that allegations of misconduct against police officers and fire fighters not be subject to compelled disclosure unless they have been substantiated and resulted in disciplinary action). You inform this office that the requested information "is in a [personnel] file in the control of the office of the Chief of Police," and that it "does not exist anywhere else in the City of Forest Hill." You therefore contend that the requested information is made confidential under section 552.101 in conjunction with section 143.089(g) and thus may not be released to the requestor. As to the information contained only in the personnel file maintained by the Chief of Police, we concur. The department must not release the requested information.

Because we find section 143.089(g) dispositive, we do not address your section 552.102 claim. This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/pr

Ref: ID# 138339

Encl. Submitted documents

cc: Ms. Brenda Scruggs  
P. O. Box 24504  
Fort Worth, Texas 76124  
(w/o enclosures)