



March 20, 2001

Ms. Joan Kennerly  
Senior Assistant City Attorney  
City of Irving  
P.O. Box 152288  
Irving, Texas 75015-2288

OR2001-1093

Dear Ms. Kennerly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145087.

The Civil Service Commission of the City of Irving (the "city") received a request for information related to the suspensions of several named city police officers and a city fire equipment operator. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code, and that a portion of the requested information is excepted under sections 552.103, 552.108 and 552.117 of the Government Code as well. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the police department is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the officer's civil service file maintained under section 143.089(a). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See Id.* §§ 143.051-.055. Such records are subject to release under chapter 552 of the Government Code. *See Id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to an officer's employment relationship with the police department

is not required to, maintain for its own internal use (the "(g)" file). Local Gov't Code § 143.089(a), (g). You state that the city is a civil service city.

The (a) file must contain certain specified items, including "any letter, memorandum, or document relating to . . . any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter." *Id.* § 143.089(a)(2). Documents relating to any alleged misconduct or disciplinary action taken must be removed from the (a) file if the city police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *Id.* § 143.089(b), (c). 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.

By its terms, section 143.089(g) makes confidential only those personnel files of a fire fighter or police officer that are maintained by a police or fire department. Therefore, section 143.089(g) does not make confidential the information you have submitted from the commission. As indicated above, however, in cases in which a police or fire department takes disciplinary action against a police officer or fire fighter, it is required by section 143.089(a)(2) to place "*any letter, memorandum, or document relating to*" the misconduct in the personnel file maintained under section 143.089(a), which would include more than just the suspension letter. The information you have submitted from the commission appears to include information subject to section 143.089(a)(2). Therefore, this information is subject to disclosure under the Public Information Act.

You argue that certain information contained within the civil service commission files is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(1) of the Government Code requires that the city withhold its employees' and former employees' home addresses, telephone numbers, and social security numbers, and information that reveals whether the employee or former employee has family members, but only to the extent that the employees and former employees have elected to keep this information confidential in compliance with section 552.024. *See* Open Records Decision No. 530 (1989) (employee must make election prior to receipt of open records request). Therefore, if the named fire equipment operator has made the election under section 552.024 to keep this information confidential, the city must withhold that information under section 552.117 of the Government Code. Section 552.117(2) requires that the city withhold its peace officers' home addresses, telephone numbers, and social security numbers, and

information that reveals whether the peace officer has family members, regardless of whether the officer complies with section 552.024. Therefore, pursuant to section 552.117, the city must withhold this type of information for the subject police officers from the information to be released from the civil service commission files.

You also argue that information relating to Officer Bollin, an officer who has appealed his suspension, is excepted from disclosure under section 552.108. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that “the allegations against Officer Bollin constitute criminal conduct if found to be true, and there is an open investigation into the criminal conduct” being conducted by the Irving police department. Based upon this representation, we conclude that the release of the information relating to officer Bollin in the civil service commission file would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g 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) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov’t Code § 552.108(c); *Houston Chronicle Publ’g 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); Open Records Decision No. 127 (1976). Thus, you must release from the civil service commission file of officer Bollin the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of an offense report.

To summarize, the city must release to the requestor the information contained within the civil service commission files of the officers and fire equipment operator, with the exception of information covered by section 552.117 of the Government Code, and information which is excepted by section 552.108(a)(1).<sup>1</sup> Basic information must be released from the civil service file of Officer Bollin.

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<sup>1</sup>Having found that the information in Officer Bollin’s civil service file is excepted from disclosure under section 552.108, we need not address your argument for withholding this information under section 552.103. Generally, basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 145087

Encl. Submitted documents

cc: Mr. Domingo Ramirez, Jr.  
Fort Worth Star-Telegram  
3201 Airport Freeway, Suite 108  
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(w/o enclosures)