



April 6, 2001

Ms. Julie Gannaway
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2001-1384

Dear Ms. Gannaway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145737.

The City of Bryan Police Department (the "department") received a request for fourteen categories of information concerning Bryan police officer Donald Swartzlander. You state that you are releasing some of the requested information, but that the remainder of the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. We have considered the exception you claim and reviewed the submitted representative sample.¹

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 of the Local Government Code contemplates two different types of personnel files: one that the police department is required to maintain as part of the officer's civil service file, and one that the police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) provides:

¹In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1987). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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.

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 city police department for its use and addressed the applicability of section 143.089(g) to that file. 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. *City of San Antonio*, 851 S.W.2d at 949; see also *City of San Antonio v. San Antonio Express-News*, No.04-99-00848-CV, 2000 WL 1918877 (Tex. App. -- San Antonio, Dec. 20, 2000, no pet. h.) (information reasonably relating to officer's employment relationship with department and maintained in the department's internal file pursuant to section 143.089(g) is confidential). 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 that investigation and disciplinary action in the personnel files maintained under section 143.089(a). Such records contained in the (a) file are not confidential under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 2 (1990).²

You assert Exhibit B is a representative sample of documents maintained by the department's internal personnel file, i.e., the section 143.089(g) file. Having reviewed the information, we conclude that Exhibit B is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

You also submit Exhibit C and ask whether it is confidential by law under section 552.101 of the Government Code. You explain that Exhibit C is a signed, written reprimand maintained in the police officer's public civil service file, i.e., the section 143.089(a) file. The public civil service director's file is maintained in accordance with section 143.089(a) - (f), which, among other things, "requires the director of the . . . police officers' civil service commission or [a] designee to maintain a personnel file for each . . . police officer" and "specifies [the] kinds of information [that] must be placed in the file." Open Records Decision No. 562 at 5 (1990). The civil service personnel file must contain any letter, memorandum, or document relating to:

²Ordinarily, information maintained in a police officer's civil service personnel file must be released to the public upon request, unless some other provision of chapter 552 of the Government Code permits the civil service to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 at 6 (1990) (construction of Local Gov't Code § 143.089(f) provision requiring release of information as required by law).

- (1) commendations, congratulations, or honors;
- (2) any misconduct 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 [chapter 143]*”; and
- (3) the periodic evaluations by a supervisor.

See Local Gov't Code § 143.089(a) (emphasis added); accord *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 948 (Tex. App. – Austin 1993, writ denied). Chapter 143, subchapter D prescribes the following types of disciplinary action: removal, suspension, demotions, and uncompensated duty. Local Gov't Code §§ 143.051 - .055. A written reprimand is not a disciplinary action prescribed by chapter 143. Attorney General Opinion No. JC-0257 at 8 (2000) (written reprimand may not be placed in public, civil service personnel file, but rather department's confidential file, maintained under section 143.089(g), is appropriate repository for written reprimand). We therefore conclude that the department must withhold the written reprimand under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

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).

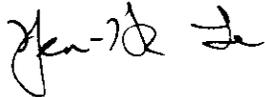
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/er

Ref: ID# 145737

Encl. Submitted documents

cc: Mr. Travis B. Bryan, III
Youngkin, Catlin, Bryan, Stacy & Dillard
P.O. Box 4629
Bryan, Texas 77805
(w/o enclosures)