



June 15, 2001

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2001-2552

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148478.

The Duncanville Police Department (the “department”), which you represent, received a request for information related to all disciplinary actions and complaints against two specific officers, and information related to the department’s “policies and general orders on handling armed suspects regarding knives and suicidal cases.” You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your claims and reviewed the submitted information.

We first address your argument under section 552.101. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by statute. You raise section 143.089 of the Local Government Code, which contemplates two different types of personnel files, one that the civil service director or designee is required to maintain as part of the police officer’s civil service file, and one that the city’s police department may maintain for its own internal use. *See* Local Gov’t Code § 143.089(a), (g). Section 143.089 of the Local Government Code provides in pertinent part:

(a) The director [of the police officers' civil service] or the director's designee shall maintain a personnel file on each . . . police officer. The personnel file must contain *any* letter, memorandum, or document relating to:

....

(1) a commendation, congratulation, or honor bestowed on the . . . police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the . . . 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.*

....

(g) A . . . police department may maintain a personnel file on a . . . 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 . . . 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 . . . police officer's personnel file.

Local Gov't Code § 143.089(a)(2), (g) (emphasis added).

The (a) file must contain certain specified items, including "any letter, memorandum, or document relating to . . . any misconduct [by the officer] if the misconduct resulted in disciplinary action [by the city police department] in accordance with [chapter 143 of the Local Government Code]." *Id.* § 143.089(a)(2). The (a) file also must contain "any letter, memorandum, or document relating to . . . the periodic evaluation of [the officer] by a supervisor." *Id.* § 143.089(a)(3).

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 a city police department for its use, and the court 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. As indicated above, however, 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 "any letter, memorandum, or document relating to" the misconduct in the personnel file 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 of the Local Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990).

You state that the submitted documents, which we have designated as exhibit "A," are "documents kept in the file by the Police Department pursuant to § 143.089(a) of the Local Government Code." We presume that you mean to indicate that the submitted documents comprise the departmental file which is maintained under section 143.089(g). We therefore agree that portions of the submitted documents are confidential under section 143.089(g) and must be withheld. We note, however, that exhibit "A" contains information related to investigations of alleged misconduct by department officers and that the information indicates disciplinary action was taken against the officers. As stated above, section 143.089(a)(2) therefore requires that *any letter, memorandum, or document relating to the misconduct* be placed in the officer's (a) file. Further, such records in the (a) file are not excepted from required disclosure under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. We have flagged those portions of exhibit "A," which are properly maintained in the police officer's personnel file under section 143.089(a). The documents maintained under section 143.089(a) are not excepted from required public disclosure under section 552.101 in conjunction with section 143.089 of the Local Government Code. Requests for information that is maintained under section 143.089(a) should be referred to the civil service director or the director's designee. *See* Local Gov't Code § 143.089(g).

We next address your argument under section 552.108. You contend that some of the requested information is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108 provides, in pertinent part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

....

You claim that certain policy and procedural documents, which we have designated as exhibit "B," are excepted from disclosure under section 552.108(b)(1). This office has stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere

with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). To claim this exception, however, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 (1990). Furthermore, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

You contend that the procedural policies in the requested documents represent the "procedures and thought processes of officers when faced with dangerous situations." You also contend that if these documents are released, it "will unnecessarily place the officers in dangerous situations." Based on your argument and our review of the procedural information, we agree that some of the procedural information is excepted under section 552.108(b)(1). We have marked the information in the documents we have designated as exhibit "B" that may be withheld.

In summary, portions of the documents we have designated as exhibit "A," must be withheld by the department under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, the flagged portions of exhibit "A," are also required to be maintained under section 143.089(a) of the Local Government Code. The documents maintained under section 143.089(a) are not excepted from required public disclosure under section 552.101 in conjunction with section 143.089 of the Local Government Code. Requests for information for documents maintained under section 143.089(a), should be referred to the civil service director or the director's designee. In addition, the marked information in the documents we have designated as exhibit "B" may be withheld by the department under section 552.108(b)(1) of the Government Code. The rest of the information in exhibit "B" must be released.

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,

A handwritten signature in cursive script that reads "Kay H. Hastings".

Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/DKB/seg

Ref: ID# 148478

Enc. Marked documents

c: Mr. Thomas J. Lochry
701 Commerce Street, Suite 110
Dallas, Texas 75202
(w/o enclosures)