



January 10, 2002

Mr. John Steiner
Division Chief
Law Department
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2002-0181

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156734.

The City of Austin (the "city") received a request for the following information:

- (1) employee time records for a named detective;
- (2) information concerning contributions to and deductions from the Austin Police Association (the "APA") business leave time pool for a specific period;
- (3) the written policy of the chief of police concerning when the president of the APA may use business leave time from the pool;
- (4) all accountings of APA business leave time taken by the APA president for a certain period;
- (5) all approvals of leave time issued by the office of the chief of police to the APA president for a certain time period;
- (6) the personnel records of a named detective;
- (7) information concerning the current salary and benefits of the named detective; and
- (8) all written complaints or allegations against the named detective or the APA.

You state that the city does not have information responsive to the third category of the request. We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You also state that the city has released information responsive to the second category of the request. However, you claim that the information responsive to the remainder of the request is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 other statutes, such as section 143.089(g) of the Local Government Code. Section 143.089 of the Local Government Code provides in pertinent part:

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

(1) a commendation, congratulation, or honor bestowed on the fire fighter or 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 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; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

....

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records at issue as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). 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.

(g) 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.

Thus, section 143.089 of the Local Government Code provides for the creation of two personnel files for police officers and fire fighters: one that must be maintained by the city's civil service director or his designee and another that may be maintained by the city's fire and police departments. Information contained in personnel files maintained by the civil service director in accordance with chapter 143, including commendations, congratulations, and honors given to a police officer by the public or the police department as well as periodic evaluations of the police officer by a supervisor, must be released to the public unless the information comes within one of the Act's exceptions to required public disclosure. However, information contained in a personnel file held by the police department is confidential pursuant to section 143.089(g) and may not be disclosed under the Act.

You indicate that the submitted information is part of the police department's personnel file on the named detective and therefore is confidential under section 143.089(g) of the Local Government Code. Based on your contention that the submitted information is contained in the police department's personnel file, we agree that most of the submitted information is confidential under section 143.089(g). However, we note that some of the submitted information consists of commendations, congratulations, and honors received by the named detective from the public or the police department as well as periodic evaluations of the named detective. While this information, which we have marked, may be kept in the police department's personnel file, it must also be kept in the civil service personnel file. Local Gov't Code § 143.089(a)(1), (3). Therefore, although the commendations, congratulations, honors, and evaluations maintained in the police department's internal personnel file are confidential under section 143.089(g), the commendations, congratulations, honors, and evaluations in the civil service personnel file are not confidential under that provision.

Nevertheless, portions of the submitted commendations, congratulations, honors, and evaluations are excepted from disclosure under sections 552.117 and 552.130 of the Government Code. Section 552.117(2) of the Government Code provides:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

...

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024.

The information at issue contains the named detective's social security number. The city must withhold the detective's social security number, which we have marked, under section 552.117(2).

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

The information at issue contains a driver's license number. Therefore, to the extent this number, which we have marked, relates to a driver's license issued by an agency of the State of Texas, you must withhold the number under section 552.130.

In summary, you must withhold the submitted information from the department's personnel file under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, the commendations, congratulations, honors, and evaluations that we have marked must also be maintained in the civil service personnel file and cannot be withheld from that file under section 143.089(g). The commendations, congratulations, honors, and evaluations must be released from the city's civil service personnel file, with the exception of the detective's social security number and the driver's license number, to the extent the driver's license number relates to a driver's license issued by an agency of this state.

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).

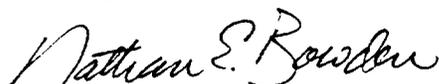
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 156734

Enc: Submitted documents

c: Mr. Clark Lyda
1220 South Austin Avenue
Georgetown, Texas 78626
(w/o enclosures)