



April 29, 2002

Mr. Wiley B. McAfee
Police Legal Advisor
Irving Police Department
P.O. Box 152288
Irving, Texas 75015-2288

OR2002-2213

Dear Mr. McAfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#162041.

The Irving Police Department (the "department") received a request for a completed investigation report once the investigation had been completed. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You indicate that the department had not completed its investigation at the time of the request. 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 *dism'd*); Open Records Decision No. 452 at 3 (1986); Open Records Decision No. 342 at 3 (1982). Portions of the submitted information were apparently created after the date of the request and are, consequently, not subject to required disclosure. Also, the Act does not require a governmental body to comply with a request for information that is prepared in the future, Attorney General Opinion JM-48 at 2 (1983), Open Records Decision 476, Open Records Decision 465, or to prepare new information in response to a request, Attorney General Opinion H-90, Open Records Decision 452. However, to the extent that the submitted information is responsive to the request, we will address your claim that the submitted information is excepted from required public disclosure.

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:

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).

You indicate that the information at issue is part of the named police officer's departmental personnel file maintained for departmental use. Based on your representations and our review of the submitted information, we conclude that information is confidential pursuant to section 143.089(g) of the Local Government Code. Consequently, the department must withhold the information based on section 552.101 of the Government Code. Because our present ruling is dispositive of the request, we need not consider your argument under sections 552.103 and 552.108.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 162041

Enc: Submitted documents

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