



May 3, 2002

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

OR2002-2343

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# 162312.

The City of Irving Police Department (the "department") received a request for internal affairs information concerning the requestor. You claim that the requested information is exempted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. The requestor has also submitted arguments to this office. *See Gov't Code § 552.304.* We have considered all of the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 exempts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. We understand that the City of Irving is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a file that must be maintained by the city's civil service director or his designee and another file that may be maintained by the city's police department for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a peace officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the peace officer's civil service file maintained under section 143.089(a). Such records are subject to release under chapter 552 of the Government Code. *See Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).* However, information maintained in a police department's personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

You indicate that the information at issue is maintained in the department's personnel file pursuant to section 143.089(g). The requestor contends that the requested information is not maintained in his police department personnel file. We cannot resolve disputes of fact in the open records process, and therefore, we must rely on the representations of the governmental body requesting our opinion. Open Records Decision Nos. 554 (1990), 552 (1990). Based on the department's assertion that the submitted information is maintained in the department's personnel file, we find that the submitted information 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.¹ Based on this finding, we need not reach the remainder of your arguments.

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).

¹We note that the submitted information contains documents that are required to be placed in the civil service commission's personnel file under section 143.089(a) of the Local Government Code. Furthermore, section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

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); *Tex. Dep't of Pub. 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. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 162312

Enc: Submitted documents

c: Mr. Sean Seibert
2601 Castle Street
Irving, Texas 75038
(w/o enclosures)