



May 24, 2002

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

OR2002-2799

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# 163443.

The Bryan Police Department (the “department”) received a request for fourteen categories of information relating to a named police officer. You advise that the department is releasing to the requestor public information responsive to the request. You claim that certain other requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. We have considered the exception you claim and reviewed the sample of submitted information.<sup>1</sup>

Bryan is a civil service city pursuant to chapter 143 of the Local Government Code. You assert that the requested information in Exhibit B, maintained by the department for employment purposes, is deemed confidential under 143.089(g). You also ask whether the certificates of completion for law enforcement training in Exhibit C, documents that are not on the exclusive list of those that are required to be maintained in the civil service director’s file pursuant to section 143.089(a) of the Local Government Code, are therefore excepted from public disclosure under section 552.101 of the Government Code.

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. Section 143.089 of the Local Government Code

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<sup>1</sup>We assume that the “representative sample” of responsive documents submitted to this office is truly representative of the requested records 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.

contemplates two different types of personnel files, one that the city's police department 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 provides in pertinent part:

(a) The director 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; and

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

...

(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.

Local Gov't Code § 143.089(a), (g). 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 state that the information in Exhibit B is "contained in the department's officer specific file, used only by the department for employment purposes." Based on your representations and our review of the submitted information, we conclude that the information in Exhibit B is confidential pursuant to section 143.089(g) of the Local Government Code.<sup>2</sup> Consequently, the department must withhold the requested information in Exhibit B from the requestor based on section 552.101 of the Government Code.

We next consider whether the certificates of completion are excepted under section 552.101. While section 143.089(a) does in fact provide an exclusive list of the documents that are required to be maintained in the civil service director's file, there is clearly no prohibition against including additional documents within that file. Such records are subject to release under chapter 552 of the Government Code. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). You indicate that the training certificates are contained in the civil service director's file. Because you have not asserted any other exception to public disclosure, this information must be released to the requestor.

To summarize: you must withhold the information in Exhibit B based on section 552.101 in conjunction with section 143.089(g). You must release the information in Exhibit C relating to certificates of completion, as it is located in your civil service director's file and you have raised no exception to its disclosure.

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.

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<sup>2</sup> We assume the department complied with the procedural requirements of section 143.089(g) by referring the requestor to the civil service director. This ruling does not address whether the civil service file maintained pursuant to section 143.089(a) and (b) is excepted from required public disclosure.

*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. 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*

V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 163443

Enc: Submitted documents

c: Mr. Jim W. James  
P.O. Box 1146  
Bryan, Texas 77806  
(w/o enclosures)