



June 20, 2002

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

OR2002-3343

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164629.

The City of Austin Police Department (the "department") received a request for five categories of information. Specifically, the requestor seeks a copy of a certain computer-assisted dispatch report; a copy of citizen complaints relating to a named police officer; a copy of internal memoranda regarding officer complaints relating to the same police officer; copies of workman's compensation claims filed by the named officer; and copies of internal memoranda prepared by the named officer regarding his off-duty incident with a certain individual. You state that you have released "front page" information relating to request item 5. You claim, however, that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that you did not submit to this office information responsive to request item 2, information regarding citizen complaints related to the named police officer. To the extent that any responsive information exists, we assume that it has been released. If you have not released any such information, you must release it to the requestor at this time. *See Gov't Code §§ 552.301(a), .302.*

You assert that the information responsive to request items 3 and 4 is excepted under section 552.101 in conjunction with section 143.089 of the Local 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

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 inform us that the department will refer the requestor to the Director of the Civil Service Commission with regard to request items 2, 3, and 4. You indicate that the submitted information responsive to request items 3 and 4 is "part of the departmental personnel file of the named officer." Based on your representations and our review of the submitted information, we conclude that the information responsive to these request items is confidential pursuant to section 143.089(g) of the Local Government Code. Consequently, the department must withhold the information from the requestor based on section 552.101 of the Government Code.

You next argue that information sought in request items 1 and 5 is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure if:

- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication

Gov't Code § 552.108(a)(2). You indicate that the information responsive to request items 1 and 5 concerns a completed investigation that did not result in conviction or deferred adjudication. Accordingly, you may withhold the information responsive to these request items under section 552.108(a)(2).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense information, the department may withhold the requested information from disclosure based on section 552.108(a)(2). You state that the "front page" information from the incident report has been released. We note that the department has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the department must withhold from disclosure the submitted information responsive to request items 3 and 4 under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. With the exception of basic information, the department may withhold the remainder of the requested information based on section 552.108(a)(2).

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. 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# 164629

Enc: Submitted documents

c: Mr. Rick J. W. Ojeda  
P.O. Box 263  
Georgetown, Texas 78627  
(w/o enclosures)