



June 20, 2002

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

OR2002-3353

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# 164642.

The Irving Police Department (the "department") received, from the same requestor, two requests for "complaints and completed investigation reports for complaints made against a named police officer," and "all dispatch logs, complaints, arrest records and/or any records connected to officers" dispatched to a particular International House of Pancakes for the past three years. You state that, with respect to the first request, you sought a request for clarification from the requestor on April 17, 2002, and that pending the requestor's response, additional action will be taken. With respect to the second request, you claim that the responsive information is excepted from disclosure under section 552.101 of the Government Code, in conjunction with Local Government Code sections 143.089(g). We have considered the exception you claim and reviewed the submitted information.

Initially, we note that it does not appear that you have submitted any information responsive to the second request. Nor do you assert that the information is excepted from required public disclosure. You state that "[a] clarification for narrowing the scope of the request was sent to the requestor on April 17, 2002. Upon response from the requestor, additional action will be taken."

The Public Information Act permits a governmental body to ask a requestor to clarify the request and to discuss with the requestor how the scope of a request might be narrowed. Gov't Code § 552.222(b). While a governmental body and a requestor are communicating in good faith to clarify or narrow a request, the duty to respond to the request is tolled until the governmental body's receipt of the clarification or narrowing response. *See* Open Records Decision No. 663 (1999). In this case, the requestor has not responded to the

department's request for narrowing the scope of the request. Until the requestor responds, we need not address your claimed exception to the required public disclosure of the "dispatch logs, complaints, arrest records and/or any records" related to the police officers dispatched to the named International House of Pancakes.

We now address your argument under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. 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 inform us that the department has referred the requestor to the Director of the Civil Service Commission for the City of Irving. You also state that there are no other additional documents responsive to this request contained in the department's file or the file maintained by the Director of the Civil Service Commission. You explain that the submitted records are maintained by the department as 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 the submitted information 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.

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  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 164642

Enc: Submitted documents

c: Mr. Melvin Tomlinson  
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Watauga, Texas 76148  
(w/o enclosures)