



June 25, 2002

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2002-3463

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164131.

The Fort Worth Fire Department (the “department”) received a request for “information relating to the incident that occurred with Fire Station #1 personnel regarding the choking of a citizen.” Specifically, the requestor seeks “records indicating the name of the citizen, his outcome, names of fire department personnel involved, statements, and disciplinary actions taken.” You contend that the requested information is made confidential pursuant to 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 submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters’ and police officers’ civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the creation of two personnel files for fire fighters: one that is maintained by the city’s civil service director and the other by the city fire department.

Information contained in personnel files held by the civil service director, including all records relating to misconduct by fire fighters that resulted in disciplinary action, as contemplated by chapter 143, must be released to the public unless the information comes

within one of the Public Information Act's exceptions to required public disclosure. You inform us, however, that the information at issue is an internal affairs investigation of the department that did not result in disciplinary action. *See* Gov't Code § 143.089(a)(2). You, therefore, contend that the submitted information is made confidential under section 143.089(g) of the Local Government Code and thus must not be released to the requestor.

We note, however, that the requestor is not specifically seeking information from the department's internal personnel files. Instead, he requests general information regarding a specific incident. Furthermore, while we generally agree that the department's internal affairs investigations that do not result in disciplinary action are confidential under section 143.089(g), we note that the majority of the submitted records are maintained separate and apart from the internal affairs investigation. The department may not engraft section 143.089's confidentiality to other records that exist independently of the internal affairs investigation. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d at 564-65 (providing that only information that reasonably relates to fire fighter's employment relationship with department is confidential under Local Gov't Code § 143.089(g)). We have marked the documents that appear to be solely maintained in the department's personnel files and must be withheld under section 552.101. The remaining documents, however, may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g).

We note, however, that some of these records are Emergency Medical Service ("EMS") records that are protected from disclosure under section 773.091 of the Health and Safety Code. Section 773.091 provides:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

This confidentiality "does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services." *Id.* § 773.091(g). It does not appear that any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code apply in this instance. Accordingly, except for information required to be released under section 773.091(g), the department must withhold the marked EMS records under section 552.101 of the Government Code. Since you have made no other arguments explaining why the remaining documents are excepted from disclosure, these records must be released.

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).

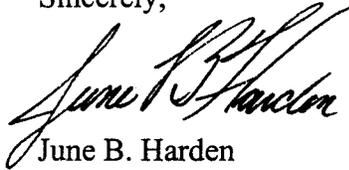
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being the most prominent.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/JKL/sdk

Ref: ID# 164131

Enc: Marked documents

c: Ms. Artie M. Dawson
721 Thompson Street
Everman, Texas 76140
(w/o enclosures)