



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 31, 2003

Mr. Albert López  
Lopez & Smith  
3355 Cherry Ridge, Suite 100  
San Antonio, Texas 78230

OR2003-7856

Dear Mr. López:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190405.

The Laredo Police Department (the "department"), which you represent, received a request for information relating to investigations, both criminal and internal, of assaults involving police officers during a specified time period. You state that some information has been released to the requestor but claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.119, and 552.1175 of the Government Code. You have submitted to this office representative samples of the different types of information requested.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as section 143.089(g) of the Local Government Code. We understand that the City of Laredo is a civil service city under chapter 143 of the Local Government Code.

---

<sup>1</sup>We assume that the "representative samples" of records submitted to this office are 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.

Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that a city's civil service director is required to maintain, and an internal file that a police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against a police officer, section 143.089(a)(2) requires the department to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a).<sup>2</sup> *Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.).

All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or in possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* at 120, 122. Such records are not confidential and are subject to release under the Public Information Act (the “Act”) unless an exception under the Act applies. *See City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 948-49 (Tex. App.—Austin 1993, writ denied); *see also* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). Information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You indicate that the information in Exhibits A and C relates to internal affairs investigations that did not result in disciplinary action for the purpose of section 143.089.<sup>3</sup> Thus, you state that the information is maintained in the police department's personnel file pursuant to section 143.089(g). Based on your representations that the information is maintained in the department's internal files and our review, we find that this 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.

---

<sup>2</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055.

<sup>3</sup>Contrary to your statement, we note that Exhibit A consists of complaint information that is required to be placed in the civil service commission's personnel file under section 143.089(a) of the Local Government Code because it relates to an investigation that resulted in disciplinary action as contemplated by chapter 143. 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. In your letter dated August 26, 2003, you state that the requestor has been so referred.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the offense report in Exhibit B relates to a pending criminal prosecution. Based on your representations and our review, we determine that the release of the offense report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14<sup>th</sup> Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You indicate that the offense reports in Exhibit D relate to investigations that did not result in conviction or deferred adjudication. Based on your representations and our review, we find that section 552.108(a)(2) is applicable to Exhibit D.

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov’t Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108 authorizes you to withhold the remaining information in Exhibits B and D from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

In summary, the department must withhold Exhibits A and C under section 552.101 in conjunction with section 143.089(g). The department may withhold Exhibit B under section 552.108(a)(1), with the exception of basic information. The department may withhold Exhibit D under section 552.108(a)(2), with the exception of basic information.<sup>4</sup>

---

<sup>4</sup> As our determinations under sections 552.101 and 552.108 are dispositive, we do not reach your argument under sections 552.103, 552.1175, and 552.119.

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 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,

A handwritten signature in black ink that reads "Amy Peterson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/seg

Ref: ID# 190405

Enc. Submitted documents

c: Ms. Cristi Hinojosa  
1815 Denmark Lane  
Laredo, Texas 78045-8379  
(w/o enclosures)