



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 12, 2003

Sergeant Kyle Barton  
Professional Standards  
Haltom City Police Department  
5110 Broadway Avenue  
Haltom City, Texas 76117-3726

OR2003-8130

Dear Sgt. Barton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 191263.

The Haltom City Police Department (the "Department") received a request for access to and copies of "[a]ny incident report, offense report, internal police reports, complaints filed or citations issued against any officer alleging assault, stalking, threats, or harassment toward spouses, boyfriends or girlfriends or children . . . from January 1, 1998 through August 15, 2003." You assert the submitted information is excepted from disclosure under section 552.101 of the Government Code. We reviewed the information you submitted and considered the exception you claim.

Initially, we note that you seek to withhold only "some of the requested information." We assume the Department has provided the requestor with any responsive information that you have not submitted to this office for our review. If the Department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides as follows:

[T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this case, the submitted information consists of a completed internal affairs investigation. Thus, the Department must release the information, unless it is expressly confidential under other law or excepted from disclosure under section 552.108. As you claim section 552.101, which constitutes other law for purposes of section 552.022, we will address your arguments under this exception.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. *See* Gov't Code § 552.101. We understand that the City is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: 1) a police officer's civil service file that the civil service director must maintain and 2) an internal file that the 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 an officer, it is required by section 143.089(a)(2) 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 officer's civil service file maintained under section 143.089(a). *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. The types of disciplinary records that must be maintained in the civil service file include those records that relate to removal, suspension, demotion, or uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. 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). However, a document relating to an officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. *See id.* § 143.089(b). 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). We note that the Department has a duty to refer the

requestor to the civil service director or the director's designee. *See* Local Gov't Code § 143.089(g).

You contend section 143.089 governs the submitted information. You explain that the investigated officer "was exonerated as a result of the investigation." Because the investigation did not result in disciplinary action, the information relating to the investigation is required to be maintained in the Department's personnel file. Therefore, we find that the submitted internal affairs investigative file is confidential under 143.089(g) and must be withheld under section 552.101 of the Government Code. *See* Local Gov't Code § 143.089(b).

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).

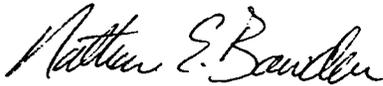
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/seg

Ref: ID# 187873

Enc: Submitted documents

c: Ms. Donna Ressler  
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(w/o enclosures)