



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 23, 2003

Ms. Courtney Alvarez
City Attorney
City of Kingsville - Legal Department
P.O. Box 1458
Kingsville, Texas 78364

OR2003-9279

Dear Ms. Alvarez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193342.

The City of Kingsville (the "city") received a request for: (1) Lt. Robert Alvarez's conduct and personnel records, (2) copies of complaints made by Lt. Alvarez to city officials regarding members of the police department, (3) correspondences between members of the Kingsville police department and city officials regarding the removal of officers under the supervision of Lt. Alvarez, and (4) correspondence between Lt. Alvarez and city officials regarding the removal of officers under his supervision. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. We have considered the exception 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 of the Local Government Code. We understand that the city is a civil service city under chapter 143. Section 143.089 of the Local Government Code provides for the existence of two different types of personnel files relating to a police officer, including one that must be maintained as part of the officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The officer's civil service file must contain certain specified items, including commendations, periodic

evaluations by the police officer's supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. 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 police officer's civil service file maintained under section 143.089(a). *See 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 are in the 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 119, 121. Such records may not be withheld under section 552.101 of the Government Code. *See Local Gov't Code* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information relating to a police 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 Local Gov't Code* § 143.089(b). Likewise, information maintained in a police department's personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted information responsive to the request is maintained in the departmental personnel files of two officers pursuant to section 143.089(g). You further represent that you will produce responsive information maintained in the named officer's civil service file pursuant to section 143.089(a). Based upon your representations and our review of the information at issue, we conclude that the information that we have marked is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101.

However, we note that some of the submitted information relates to officer misconduct that resulted in disciplinary action as prescribed by chapter 143. *See Local Gov't Code* §§ 143.051-.055 (removal, suspension, demotion, and uncompensated duty). While this type of information may be kept in the police department's personnel file, it must also be kept in the civil service personnel file. *Local Gov't Code* §§ 143.052,.089(a)(2), (3). As noted above, records maintained in the city's civil service file are subject to disclosure. Therefore, file # I-46-02 which relates to an officer's disciplinary suspension must also be placed in the civil service personnel file and released to the requestor.

We note however, that file # I-46-02 contains information that is confidential pursuant to section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from

disclosure the present and former home addresses and telephone numbers, social security number, and family member information of a peace officer regardless of whether the officer requests confidentiality for that information under section 552.024.¹ Therefore, the section 552.117(a)(2) information we have marked in file # I-46-02 must be withheld from disclosure. The remaining information in file # I-46-02 must be released to the requestor.

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

¹ "Peace Officer" is defined by article 2.12 of the Code of Criminal Procedure.

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 193342

Enc. Submitted documents

c: Mr. Quincy C. Collins
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(w/o enclosures)