



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 14, 2004

Ms. Lisa Aguilar
Mr. Stephen R. Zastrow
Assistant City Attorneys
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2004-7843

Dear Ms. Aguilar and Mr. Zastrow:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209129.

The Corpus Christi Police Department (the "department") received two requests for information pertaining to a specified incident and procedure or policy. You state that the department has provided the requestors with some of the requested information. You claim that the remaining requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information. We have also considered comments submitted by the requestors. *See Gov't Code § 552.304* (providing that person may submit comments stating why information should or should not be released).

Initially, we note that a portion of the submitted information constitutes an arrest warrant. The 78th Legislature amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk

to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Crim. Proc. Code art. 15.26. Thus, the arrest warrant that we have marked is made public under article 15.26 of the Code of Criminal Procedure. As a general rule, the exceptions to disclosure found in the Public Information Act (the "Act") do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, we conclude that the department must release this marked arrest warrant to the requestors pursuant to article 15.26 of the Code of Criminal Procedure.

You claim that the remaining submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.¹ You state that the City of Corpus Christi is a civil service city under chapter 143 of the Local Government Code. 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. *See* 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 police officer's civil service file maintained under section 143.089(a). *See Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (no pet.). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051 - .055. Such investigatory records are subject to release under chapter 552 of the Government Code. *See id.* § 143.089(f); *see also* Open Records Decision No. 562 at 6 (1990). However, 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.² *See City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

² We note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the city's civil service director or the director's designee. *See* Local Gov't Code § 143.089(g). If you have not already done so, you must refer the requestors to the civil service director at this time.

You indicate that the submitted information is maintained in the department's internal personnel files for the officers involved in this matter as authorized under section 143.089(g) of the Local Government Code. Based on your representation and our review of the remaining submitted information, we agree that some of this information is, thus, confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld from the requestors pursuant to section 552.101 of the Government Code. We have marked this information for your review. However, we note that the remainder of this information is contained in department investigation records maintained separate and apart from those of the internal affairs investigation. The department may not engraft the confidentiality afforded to records under section 143.089(g) to other records that exist independently of the internal affairs investigation. Accordingly, we conclude that the department may not withhold any portion of the remainder of the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

You also claim, however, that the remainder of the submitted information is excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You indicate that the remainder of the submitted information pertains to a pending prosecution. Thus, we agree that section 552.108(a)(1) is applicable to the remainder of the submitted information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See Gov't Code* § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, to include detailed description of offense). Accordingly, we conclude that with the exception of basic information that must be released to the requestors, the department may withhold the remainder of the submitted information pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the department maintains the discretion to release all or part of this information that is not otherwise confidential by law. *See Gov't Code* § 552.007.

In summary, the department must release the arrest warrant that we have marked pursuant to article 15.26 of the Code of Criminal Procedure. The department must withhold the information that we have marked pursuant to section 552.101 in conjunction with

section 143.089(g) of the Local Government Code. Except for the basic information that must be released, the department may withhold the remaining submitted information pursuant to section 552.108(a)(1) 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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 209129

Enc. Marked documents

c: Mr. Jack Gordy
Ms. Juanita Gordy
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(w/o enclosures)