



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 27, 2006

Mr. Mark Mann  
Assistant City Attorney  
City of Garland  
P. O. Box 469002  
Garland, Texas 75046-9002

OR2006-15095

Dear Mr. Mann:

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# 267808.

The City of Garland (the "city") received a request for the personnel file of a former city police officer.<sup>1</sup> You state that some responsive information has been released to the requestor. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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." Gov't Code § 552.101. 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 of the Local Government Code. Section 143.089 of the Local Government Code provides for the existence of two different types of personnel files relating to a police officer: 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 police department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.*

---

<sup>1</sup>The request was addressed to and received by the city's police department. As responsive, you have submitted records maintained by the police department and the city's civil service commission. Therefore, we understand you to have treated this request as being to the city as a whole.

§ 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. Information contained in the civil service file generally must be released, unless it is shown that some provision of chapter 552 of the Government Code permits the information to be withheld from public disclosure. *See* Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 at 6 (1990).

Section 143.089 also allows, but does not require, a police department to maintain its own personnel file concerning the police officer for the department's own internal use. *See* Local Gov't Code § 143.089(g). Information that reasonably relates to a police 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 be withheld pursuant to section 552.101 of the Government Code. *See id.*; *see also City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied) (“the legislature intended to deem confidential the information maintained by the . . . department for its own use under subsection (g)”); *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting confidentiality under section 143.089(g) to “information reasonably related to a police officer's or fire fighter's employment relationship”); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files).

You explain that some of the requested information is maintained solely in the Garland Police Department's internal personnel file of this officer pursuant to section 143.089(g). Based on your representations and our review of the documents at issue, we agree that this information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld pursuant to section 552.101 of the Government Code.

You claim that a portion of the remaining information, which is maintained in the former officer's civil service commission file under section 143.089(a), is confidential under section 552.101 and common-law privacy. The common-law right of privacy protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982), are excepted from required public disclosure under common-law privacy. We have reviewed the remaining information and agree that the information you have marked in blue must be withheld under section 552.101 in conjunction with common-law privacy.

You also claim that some of the remaining information is confidential under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

- (a) Information is excepted from required public disclosure if the information relates to:
  - (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
  - (2) a motor vehicle title or registration issued by an agency of this state;[or]
  - (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130. We have reviewed the submitted records and agree that the motor vehicle record information you have marked in green must be withheld under section 552.130 of the Government Code.

In summary, the city must withhold (1) the police department internal files pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code, (2) the common-law privacy information marked in blue under section 552.101 of the Government Code, and (3) the motor vehicle record information marked in green pursuant to section 552.130 of the Government Code. The remaining information 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

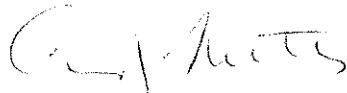
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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 Office of the Attorney General 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. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/eb

Ref: ID# 267808

Enc. Submitted documents

c: Mr. Brandon Formby  
The Dallas Morning News  
131 West Main Street  
Lewisville, Texas 75067  
(w/o enclosures)