



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2006

Ms. Patricia E. Carls
City Attorney
City of Georgetown
106 East Sixth Street, Suite 550
Austin, Texas 78701

OR2006-01354

Dear Ms. Carls:

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# 242128.

The Georgetown Police Department (the "department"), which you represent, received a request for information pertaining to an incident in which a named individual received a citation from a Georgetown police officer, and for "any publicly available portions of the officer's [personnel] file including any previous complaints." You state you have released information from the civil service file maintained by the director of civil service for the City of Georgetown.¹ See Local Gov't Code § 143.089(a). However, you claim that the remaining requested information is excepted from disclosure under section 552.101 of the

¹Although you state you have redacted information in these documents under section 552.1175 of the Government Code, we note that section 552.117 is the correct exception for an officer still employed by the department. See Gov't Code §§ 552.117(a)(2), 552.1175; Open Records Decision No. 670 at 6 (2001) (authorizing all governmental bodies that are subject to chapter 552 of Government Code to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without necessity of requesting attorney general decision under Gov't Code § 552.117(a)(2)); see also Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under Gov't Code § 552.301).

Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

First, we must address the department's duties under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You state that the department received the request for information on November 17, 2005. Thus, the fifteen day deadline for submitting a copy or representative sample of the requested information was December 5, 2005. Although you timely submitted arguments in support of withholding the requested information, you did not submit a representative sample of some of the information for our review until February 1, 2006.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because section 552.101 can provide a compelling reason for withholding information, we will address your arguments under this section.

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

² We assume that the "representative sample" of records submitted to this office is 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.

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. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, 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. See *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the documents in Exhibit D are maintained in the department's internal file for the officer pursuant to section 143.089(g) of the Local Government Code. You also state that the document submitted to this office on December 1, 2005 is currently contained in the department's internal personnel file for the officer pursuant to section 143.089(g). Based on your representations and our review of the submitted information, we conclude that the information in Exhibit D, as well as the document submitted on December 1, 2005, are confidential pursuant to section 143.089(g) of the Local Government Code and, thus, must be withheld pursuant to section 552.101 of the Government Code. We note, however, that Exhibit D includes evaluations of the named officer. The section 143.089(a) personnel file also must contain "any letter, memorandum, or document relating to . . . the periodic evaluation of [the officer] by a supervisor." *Id.* § 143.089(a)(3). Thus, while this information, which we have marked, may be kept in the department's internal file, it must also be kept in the civil service personnel file. Local Gov't Code § 143.089(a)(1), (3). Therefore, although the evaluations maintained in the department's internal personnel file are confidential under section 143.089(g), the evaluations in the civil service personnel file are not confidential under that provision and may not be withheld under section 552.101 of the Government Code.

Next, we note that you have submitted "documents found in the human resource file," indicating that the department keeps what is essentially a third file.³ We find the maintaining of three files to be contrary to the purpose and legislative intent of section 143.089. As noted above, section 143.089 contemplates the existence of only two personnel files concerning a particular police officer. Documents relating to commendations, periodic evaluations by the officer's supervisor, and misconduct that resulted in disciplinary action against the officer under chapter 143 of the Local Government Code must be held in the civil service file and

³ We note that these documents, which were submitted on February 1, 2006, are labeled "Exhibit B." For purposes of this letter ruling, these documents will be referred to as the "human resources file."

are subject to public disclosure under chapter 552 of the Government Code. *See* Local Gov't Code § 143.089(a)(1)-(2). Documents that relate to unsustained allegations of misconduct or disciplinary action taken without just cause must be held in the police department's confidential section 143.089(g) file. The maintenance of a third file, the contents of which are subject to public disclosure under chapter 552 of the Government Code, is contrary to Georgetown's election to be governed by chapter 143 of the Local Government Code and to the legislative purpose of section 143.089. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (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); *see also City of Corpus Christi*, 109 S.W.3d at 122. Because the documents in the human resources file are not statutorily required to be maintained in the officer's civil service file, these documents must be maintained in the department personnel file, and therefore must also be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

In summary, Exhibit D, the document submitted on December 1, 2005, and the human resource file must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The remaining submitted information must be released.

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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/segh

Ref: ID# 242128

Enc: Submitted documents

c: Mr. Diop Kamau
Police Complaint Center
1220 L Street NW, Suite 100-164
Washington, D.C. 20005
(w/o enclosures)