



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2006

Mr. Albert López
Law Offices of Albert López
14310 Northbrook Drive, Suite 110
San Antonio, Texas 78232

OR2006-01731

Dear Mr. López:

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# 242785.

The Laredo Police Department (the "department"), which you represent, received a request for all records pertaining to complaints of alleged sexual harassment or sexual assault filed against all department police officers for the past five years, and for the names and addresses of every female that has filed a complaint. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We first note that the submitted information includes a search warrant affidavit. A search warrant affidavit is made public by statute if the search warrant has been executed. *See* Crim. Proc. Code art. 18.01(b). Here, the search warrant was executed. Therefore, the department must release the search warrant affidavit pursuant to article 18.01 of the Code of

¹We 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.

Criminal Procedure. *See* Open Records Decision No. 525 (1989) (stating that exceptions to disclosure do not, as a general rule, apply to information made public by other statutes).

Next, we note the submitted information contains several arrest warrants and complaints. The release of the submitted arrest warrants is governed by article 15.26 of the Code of Criminal Procedure, which provides that “[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information.” Crim. Proc. Code art. 15.26. Article 15.04 of the Code of Criminal Procedure provides that “[t]he affidavit made before the magistrate or district or county attorney is called a ‘complaint’ if it charges the commission of an offense.” Crim. Proc. Code art. 15.04. Case law indicates that a complaint can support the issuance of an arrest warrant. *See Janecka v. State*, 739 S.W.2d 813, 822-23 (Tex. Crim. App. 1987); *Villegas v. State*, 791 S.W.2d 226, 235 (Tex. App.—Corpus Christi 1990, pet. ref’d); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14th Dist.] 1996, pet. ref’d) (discussing well-established principle that complaint in support of arrest warrant need not contain same particularity required of indictment). As a general rule, the exceptions to disclosure found in 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). Therefore, the department must release the submitted arrest warrants and complaints to the requestor.

Next, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides that “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body” may not be withheld from the public unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov’t Code § 552.022(a)(1). The submitted information contains completed internal affairs investigations made by the department, which are made expressly public by section 552.022, unless they are expressly made confidential under other law. Section 552.103 of the Government Code is a discretionary exception under the Act that does not constitute “other law” for purposes of section 552.022. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the department may not withhold this information under section 552.103 of the Government Code. However, section 552.101 is “other law” for purposes of section 552.022. Therefore, we will address your argument under this section.

Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information that another statute makes confidential. Gov’t Code § 552.101. We understand that the City of Laredo 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 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 an officer’s misconduct and takes

disciplinary action against the 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. Such records are subject to release under the Act. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information 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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You indicate that the submitted information is maintained in the department's internal file pursuant to section 143.089(g). We therefore conclude that this information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101. We note, however, that the submitted information relates to internal affairs investigations that resulted in the officers' indefinite suspensions. An officer's civil service file must contain documents relating to any misconduct in those cases where the department took disciplinary action against the officer. *See* Local Gov't Code §§ 143.089(a)(2); 143.051–.055 (describing “disciplinary action” for purposes of section 143.089(a)(2)); Attorney General Opinion JC-0257 (2000). The submitted information relates to the misconduct that resulted in officers' indefinite suspensions. Therefore, this information also is subject to section 143.089(a)(2). Consequently, the submitted information also must be placed in the officer's civil service file, and the requestor must be referred to the civil service director or director's designee in accordance with section 143.089(g).² The information in the departmental file is confidential under section 143.089(g) and must be withheld from disclosure under section 552.101 of the Government Code.³

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

²You inform us the department has directed the requestor to the civil service commission for information pertaining to incidents that resulted in disciplinary action.

³As our ruling is dispositive, we need not address your remaining arguments.

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# 242785

Enc: Submitted documents

c: Ms. Sharon E. Naill
P.O. Box 440800
Laredo, Texas 78044
(w/o enclosures)