



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 26, 2006

Mr. Rashaad V. Gambrell  
Assistant City Attorney  
City of Houston - Legal Department  
P. O. Box 1562  
Houston, Texas 77251-1562

OR2006-04197

Dear Mr. Gambrell:

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# 247240.

The Houston Police Department (the "department") received a request for the department's policies and procedures regarding DWI arrests and the training records of a named officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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(g) of the Local Government Code. The City of Houston 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 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). *Abbott v. City of 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.* Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055. Such records are subject to release under chapter 552 of the Government Code. *See id.* § 143.089(f); 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. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us that the submitted information is kept in the officer's section 143.089(g) files as personnel files created and maintained by the police department. Based on these representations and our review, we conclude that the information in Exhibits 2 and 3 is confidential under section 143.089(g) of the Local Government Code and must therefore be withheld under section 552.101 of the Government Code.<sup>1</sup>

However, the submitted information includes portions of the department's policies. You state that the responsive information in Exhibit 4 pertains to the department's “Driving While Intoxicated,” “Effecting Arrests and Searches,” and “Disposition of Arrested Juveniles” policies and procedures. We assume the department maintains this information outside of the department's personnel file for this officer. The department may not engraft the confidentiality afforded to records under section 143.089(g) to other records that exist independently of the officer's personnel file. Accordingly, we conclude that the department may not withhold the submitted portions of the department's policies under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

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<sup>1</sup>As we are able to make this determination, we do not address your remaining arguments against the disclosure of this information.

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(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record would interfere with law enforcement or prosecution of crime;

Gov't Code § 552.108(a)(1), (b)(1). Subsection 552.108(a)(1) generally protects information that pertains to ongoing criminal investigations or prosecutions. Subsection 552.108(b)(1) generally applies to information such as internal police procedures the release of which would interfere with law enforcement or prosecution.

You claim that the submitted information is excepted from disclosure under 552.108(a)(1) and 552.108(b)(1) because release of the submitted information would "unduly interfere with law enforcement and crime prevention as it impairs an officer's ability to arrest a suspect or protect the public." You indicate that release of the information, "will facilitate a perpetrator in coordinating statements with other suspects, in discarding or hiding contraband and in finding opportunities to escape." You also state that release of the information "would place an individual at an advantage in confrontations with police officers and would increase his chance of evading arrest or injuring the officer or other persons." Based on these representations and our review of the submitted information, we conclude that the information we have marked in Exhibit 4 may be withheld under section 552.108(b)(1). As to the remaining information in Exhibit 4, you have failed to demonstrate that this information is not routine investigative procedures or techniques that are commonly known. Further, you have failed to demonstrate that releasing the remaining information at issue would interfere with law enforcement. Accordingly, this information may not be withheld under section 552.108 and must be released to the requestor.

In summary, the department must withhold Exhibits 2 and 3 under section 552.101 in conjunction with section 143.089 of the Local Government Code. The department may withhold the marked information under section 552.108(b)(1) of the Government Code. The remaining 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).

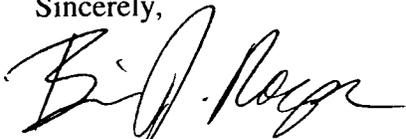
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Brian J. Rogers  
Assistant Attorney General  
Open Records Division

BJR/krl

Ref: ID# 247240

Enc. Submitted documents

c: Mr. Germaine J. Tanner  
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(w/o enclosures)