



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2006

Sgt. Thomas P. Karlock, M.S.  
Custodian of Records  
Galveston Police Department  
P.O. Box 568  
Galveston, Texas 77553

OR2006-06301

Dear Sgt. Karlock:

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# 251757.

The Galveston Police Department (the "department") received a request for the following information:

- 1) The employment file of a former officer;
- 2) A copy of any sexual harassment complaints and investigative files with respect to the conduct of the former officer;
- 3) A copy of the complete employment file for a named department employee;
- 4) A copy of any and all sexual harassment complaints directed against any male officer with the department from 1985 to present, including the department's response to any such complaint;
- 5) The employment file for any and all male officers in which sexual harassment complaints were directed against;

- 6) A copy of the City of Galveston's sexual harassment policy for the years 1990 to present.

You claim that the submitted 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 information.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the 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. *See id.* § 552.301(e)(1)(A)-(D). You inform us that the department received this request on March 24, 2006. However, you did not raise section 552.103 of the Government Code or submit the requested information for our review until April 26, 2006. Therefore, we find that the department failed to comply with the procedural requirements of section 552.301. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the submitted information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *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 section 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Section 552.103 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, this section does not demonstrate a compelling reason to withhold the submitted information from the public, and none of it may be withheld on that basis. However, section 552.101 of the Government Code can provide

a compelling reason to overcome the presumption of openness, and we will address the department's arguments concerning that exception.

Next, we note that you have redacted the current employee's personal information, including her date of birth and driver's license number. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision 673 (2000). Because we can discern the nature of this information, being deprived of it does not inhibit our ability to make a ruling in this instance. Generally, personal information belonging to a current or former employee who has made a timely election under section 552.024 of the Government Code is excepted from disclosure under section 552.117 of the Government Code.<sup>1</sup> Furthermore, driver's license numbers are generally excepted from disclosure under section 552.130 of the Government Code. In this case, however, the requestor has a right of access to the current employee's personal information and driver's license number as he is the employee's attorney. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, the current employee's personal information and driver's license number, which you have redacted, must be released to this requestor.

Next, we note that you have also redacted the former officer's personal information. In Open Records Decision No. 670 (2001), we determined that a governmental body may withhold the home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether the individual has family members, of any individual who meets the definition of "peace officer" set forth in article 2.12 of the Texas Code of Criminal Procedure, without the necessity of requesting an attorney general decision as to the applicability of the exception in section 552.117(a)(2) of the Government Code. *See id.* § 552.117(a)(2); Open Records Decision No. 670 (2001); *see also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a)). You indicate that the former officer is a peace officer as defined in the Code of Criminal Procedure. Accordingly, the department must withhold the former officer's personal information you have redacted pursuant to the previous determination in Open Records Decision No. 670.

We note, however, that the former officer's personal information may not be withheld from the police report labeled as Exhibit C-1 under section 552.117 because the protections of that section apply only to information that a governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in hands of their employer). Because the department is holding Exhibit C-1 in a law enforcement capacity, and not as an employer,

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<sup>1</sup>We note that section 552.117 of the Government Code does not except a current or former employee's date of birth from disclosure.

none of the former officer's personal information contained in the police report may be withheld pursuant to the previous determination in Open Records Decision No. 670.

However, the former officer's personal information in Exhibit C-1 may be excepted under section 552.1175 of the Government Code, which provides in part the following:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

*Id.* § 552.1175(b). You do not inform this office, nor does any of the submitted information indicate, whether the former officer at issue notified the department of his election of confidentiality for this information in accordance with subsections 552.1175(b)(1) and (2). Accordingly, we must rule conditionally. If the former officer elects or has elected to restrict access to this information in accordance with section 552.1175(b), then the department must withhold his personal information in Exhibit C-1 under section 552.1175. However, if no such election is made, the department must release this personal information along with the remainder of Exhibit C-1.

Next, we address your claims under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes such as section 143.089 of the Local Government Code. You state that Galveston 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.* Such records are subject to release under chapter 552 of the Government Code. *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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You represent that the information labeled as Exhibits C-2 and E is maintained in the department's personnel files pursuant to section 143.089(g). Therefore, we find that this information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

In summary, the department must withhold the former officer's personal information you have redacted pursuant to the previous determination in Open Records Decision No. 670. If the former officer elects or has elected to restrict access to his personal information in accordance with section 552.1175(b), then the department must withhold such information from Exhibit C-1 under section 552.1175. However, if no such election is made, the department must release this personal information along with the remainder of Exhibit C-1. Exhibits C-2 and E 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 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*, 342 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,



James A. Person III  
Assistant Attorney General  
Open Records Division

JAP/sdk

Ref: ID# 251757

Enc. Submitted documents

c: Mr. Anthony P. Griffin  
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(w/o enclosures)