



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2006

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966

OR2006-06646

Dear Mr. Weir:

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# 252136.

The San Antonio Police Department (the "department") received a request for records of complaints, reprimands, tickets and arrest records involving a named officer. You state that you will release a portion of the information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. You claim that some of the submitted information is excepted from disclosure under section 143.089(g) of the Local Government Code. You state that San Antonio is a civil service city. 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 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).¹ See *Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (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 the Act. 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 information at issue is held in departmental files maintained under section 143.089(g) of the Local Government Code. Based on your representation and our review of the information at issue, we conclude that the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code as information made confidential by law.

You claim that portions of the remaining submitted information are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(e) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that portions of the remaining information relate to pending criminal cases. Based upon this representation, we conclude that release of case numbers 06-214625, 06-226722, and 06-227197 would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the department may withhold this information under section 552.108(a)(1).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic front page offense and arrest information in the submitted report, you may withhold this information from disclosure under section 552.108. We note that you

¹You inform this office that a copy of this request for information is being forwarded to the San Antonio Firefighters and Police Officers Civil Service Commission.

have the discretion to release all or part of the remaining information in the submitted reports that is not otherwise confidential by law. Gov't Code § 552.007.

Next, you raise section 552.130 of the Government Code for some of the remaining information. Section 552.130(a)(1) requires a governmental body to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." The Texas motor vehicle record information we have marked must be withheld under section 552.130 of the Government Code.

We note that the submitted information contains a social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. The department must withhold the social security number we have marked under section 552.147.

In summary, the department must withhold the information labeled as Items 1 and 2 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Government Code. With the exception of basic information, the department may withhold case numbers 06-214625, 06-226722, and 06-227197 under section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle record information marked under section 552.130 of the Government Code and the marked social security number under section 552.147 of the Government Code. The department must release the remaining information.

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# 252136

Enc. Submitted documents

c: Mr. Ernest Bustos
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(w/o enclosures)