



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 17, 2006

Mr. Nathan C. Barrow  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2006-09428

Dear Mr. Barrow:

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# 257378.

The City of Fort Worth (the "city") received a request for the audio and video tape recordings of a specified traffic stop. You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that some of the information on the audio recordings you have submitted to us for review is not responsive to the request for information regarding a specified traffic stop. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

Section 552.101 excepts from required public 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 is made confidential by other statutes, such as section 143.089 of the Local Government Code. We understand that the city 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 police department because of its investigation into a police officer's misconduct, and the police 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 state that the submitted information is maintained in the city police department's internal file pursuant to section 143.089(g). However, we note that this information includes recordings of a traffic stop that appear to be maintained by the police department independently of any officer's personnel file. The city may not engraft the confidentiality afforded to records under section 143.089(g) to other records that exist independently of the officer's departmental file. Thus, to the extent that the submitted information is maintained solely in the officer's police departmental file, it is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code. However, to the extent the information is maintained outside the officer's police departmental file, it is not confidential under section 143.089 of the Local Government Code.

If the information at issue is not confidential under section 143.089(g), we note that a portion of it is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. Thus, you must withhold the Texas motor vehicle

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<sup>1</sup> This office will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

record information in the responsive submitted recordings pursuant to section 552.130. The remaining information must be released.

In summary, if the submitted responsive information is maintained solely in the officer's police departmental file, then it must be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. If not, then the city must redact any Texas motor vehicle record information pursuant to section 552.130 of the Government Code and release the remaining submitted 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,

A handwritten signature in black ink, appearing to read 'DKL', followed by a horizontal flourish.

Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/eb

Ref: ID# 257378

Enc. Submitted documents

c: Mr. Terrence A. Holt  
7101 Mesa Verde Trail  
Fort Worth, Texas 76132  
(w/o enclosures)