



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2006

Mr. Rashaad Gambrell
Assistant City Attorney
City of Houston
Legal Department
PO Box 368
Houston, Texas 77001-0368

OR2006-10591

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# 258853.

The Houston Police Department (the "department") received a request for information regarding a laser radar unit and a department officer's training record for that laser radar unit. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 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 of the Local Government Code. We understand that 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 a city's 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).

Information that reasonably relates to a police 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. Tex. Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

In this instance, the requestor asks for information regarding a laser radar unit and a named officer's training record. As responsive you have submitted a copy of the officer's training record and the "Laser Speed Measurement Manual" (the "manual"), which you claim are maintained in the department's internal file pursuant to section 143.089(g). Upon review, we agree that the officer's training record relates to the officer's employment relationship with the department and is maintained in the department's internal file pursuant to section 143.089(g). Thus, the officer's training record must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, the manual appears to be maintained by the department independently of the officer's personnel file. 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 departmental file. Thus, the manual is not confidential under section 143.089 of the Local Government Code and may not be withheld under section 552.101 of the Government Code. Accordingly, we will address your section 552.108 argument for the manual.

You claim the manual is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* § 552.301(a)(1), (b)(1), 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state that the manual relates to a criminal case involving a speeding offense that is currently pending in the City of Houston's municipal court. You explain that release of the manual will interfere with the pending case because its information could support or refute the accuracy of the facts obtained and used to charge the suspect in this case. Based on these representations and our review of the submitted information, we conclude that the release of the manual 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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases).

Accordingly, the city may withhold the manual under section 552.108(a)(1) of the Government Code.¹

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).

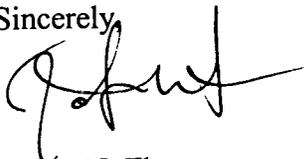
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging 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

¹As our ruling is dispositive, we need not address your remaining argument.

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 'J. Thompson', written over the word 'Sincerely,'.

Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/ir

Ref: ID# 258853

Enc. Submitted documents

c: Mr. Paul Hewson
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(w/o enclosures)