



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2006

Mr. Christopher Gregg
Gregg & Gregg, P.C.
Assistant City Attorney
for the City of Webster
16055 Space Center Blvd., Suite 150
Houston, Texas 77062

OR2006-11640

Dear Mr. Gregg:

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#261179.

The City of Webster (the "city"), which you represent, received a request by a former Webster Police Department ("department") officer for records pertaining to the officer's personnel file. You state that some of the responsive information has been released to the requestor, but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

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 section encompasses information protected by other statutes. You assert that the city may withhold the submitted information under section 143.089 of the Local Government Code. The application of chapter 143 of the Local Government Code is delineated in section 143.002 of that code, which provides:

¹We note that the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2006-11102 (2006). However, the requestor in this instance has a right of access to some of the information. Thus, the facts and circumstances on which that prior ruling was based have changed. As such, we will address the claimed exceptions against disclosure of the submitted information at issue. *See* Open Records Decision No. 673 (2001) (describing the four criteria for a "previous determination").

This chapter applies only to a municipality:

(1) that:

(A) has a population of 10,000 or more;

(B) has a paid fire department and police department;

(C) has voted to adopt this chapter or the law codified by this chapter;

or

(2) whose election to adopt this chapter and whose acts subsequent to that election were validated by the law enacted by House Bill 822, Acts of the 73rd Legislature, Regular Session, 1993.

Loc. Gov't Code § 143.002. We refer to cities that are within the ambit of this statute as "civil service" cities. We note that the City of Webster has not adopted a civil service law in accordance with chapter 143 of the Local Government Code. We therefore conclude that the confidentiality provisions of section 143.089 of the Local Government Code are not applicable to the submitted information. Thus, the city may not withhold the submitted information on that basis.

We now turn to the city's argument against disclosure based on section 552.108 of the Government Code. Section 552.108 of the Government Code provides, in pertinent part, as follows:

(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 [required public disclosure] if:

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

Gov't Code § 552.108(b)(1). Section 552.108(b)(1) of the Government Code may be applicable to internal records of a law enforcement agency, provided the law enforcement agency reasonably explains how and why release of the information at issue would interfere with law enforcement or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) exception intended to protect information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine law enforcement efforts). You state that the submitted information would interfere with law enforcement or prosecution because it would "discourage full disclosure of...employees interviewed and/or interrogated in future internal investigations." Based on your representation and our review, we find that the release of the submitted information would

not 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). Accordingly, the city may not withhold the submitted information under section 552.108 of the Government Code.

We note that the submitted information contains identifying information of peace officers.² Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.³ We have marked the information pertaining to two individuals to which section 552.117 of the Government Code applies. In this case, the two individuals are no longer employed by the city. If the two individuals remain licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the city must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code.

If the two individuals are no longer licensed peace officers, their personal information may be excepted under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(a)(1) of the Government Code must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. The city may only withhold information under section 552.117(a)(1) of the Government Code if the former peace officers made requests for confidentiality under section 552.024 of the Government Code prior to the date on which the request for this information was made. If the former peace officers timely elected to keep their personal information confidential, the city must withhold the marked personal information regardless of whether they are still peace officers. The city may not withhold this information under section 552.117(a)(1) of the Government Code if the former peace officers did not make a timely election to keep the information confidential.

We note that the submitted information contains driver's license information. Section 552.130 of the Government Code provides in relevant part:

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

³"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We note that section 552.130 of the Government Code is applicable only to Texas driver's license and motor vehicle information and does not encompass out-of-state driver's license or motor vehicle information. Therefore, the city must withhold the Texas driver's license numbers we have marked pursuant to section 552.130 of the Government Code.

Finally, 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. Gov't Code § 552.147. Accordingly, the city must withhold the social security number we have marked pursuant to section 552.147 of the Government Code.

In summary, if the two individuals remain licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the city must withhold the submitted information we have marked pursuant to section 552.117(a)(2) of the Government Code. If the two individuals are no longer licensed peace officers, the city must withhold this marked information under 552.117(a)(1) of the Government if the individuals timely elected to keep their personal information confidential. The city must withhold the Texas driver's license numbers and social security number we have marked pursuant to sections 552.130 and 552.147 of the Government Code, respectively. The remaining information must be released.⁴

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.

⁴We note that some of the submitted information contains information that would otherwise be confidential under section 552.130 of the Government Code. However, because this information belongs to the requestor, it may not be withheld in this instance. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). However, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

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).

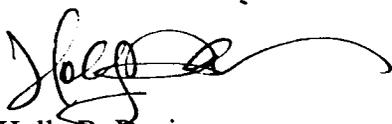
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 261179

Enc. Submitted documents

c: Mr. Roger Gonzalez
P. O. Box 58231
Webster, Texas 77598
(w/o enclosures)