ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2006

Mr. Les Moore
Police Legal Adviser
Irving Police Department
305 North O'Connor Road
Irving, Texas 75061

OR2006-11859

Dear Mr. Moore:

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# 261698.

The Irving Police Department (the "department") received a request for specific information regarding the arrest of a named individual, personnel information regarding the arresting officer, particular information regarding evidence in the arrest, and department policy concerning the handling of evidence. You state that you have released copies of the probable cause affidavits and information related to the evidence in the arrest. You claim, however, that the remaining submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.[1] 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 section 143.089 of the Local Government Code. We understand the City of Irving 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

[1]Although you raise section 552.119 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you have withdrawn this exception. *See* Gov't Code §§ 552.301, .302.

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). 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).[2] *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, a document relating to a police officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). 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).

You indicate that a portion of the submitted information is maintained in the department's internal files concerning this officer.[3] Based on your representations and our review of the submitted information, we agree that the officer's departmental file, which we have marked, 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.

Section 552.108(a) of the Government Code 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),

---

[2]Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143.

[3]Section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining submitted information relates to pending criminal cases. Based upon this representation, we agree that the release of the information at issue 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).

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* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the remaining submitted information may be withheld under section 552.108(a)(1) of the Government Code.[4]

Finally, we note that the remaining submitted information includes an arrestee's 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.[5] The department must withhold the arrestee's social security number under section 552.147 of the Government Code.

In summary, the department must withhold the officer's departmental file under section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code. With the exception of basic information, the department may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code. The department must withhold the arrestee's social security number under section 552.147 of the Government Code.

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

---

[4]As our ruling on this issue is dispositive, we need not address your argument under section 552.103 of the Government Code, except to note that basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 362 (1983).

[5]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,

Michael A. Lehmann
Assistant Attorney General
Open Records Division

MAL/dh

Ref: ID# 261698

Enc. Submitted documents

c: Mr. Dan Ronan
Sr. Reporter
WFAA TV
606 Young Street
Dallas, Texas 75202
(w/o enclosures)