



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2006

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P. O. Box 2000
Lubbock, Texas 79457-2000

OR2006-12828

Dear Ms. Sims:

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# 263269.

The City of Lubbock (the "city") received three requests for information pertaining to a named officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the first requestor asked for all disciplinary records or internal affairs investigations involving the named officer for the past 10 years or while he was employed by the Lubbock Police Department (the "department"). We further note that the second requestor asked for the complete human resources, department, and civil service files for the named officer, and that the third requestor also asked for the officer's department and city personnel files, as well as internal affairs division information. You inform us that the information submitted is from the "(g) file", or the department's internal file, of the officer at issue. Therefore, to the extent the city possessed other information responsive to the requests that the city has not provided to this office for review, we assume it has been released to the requestors. If not, the city must release any such information to the requestors at this time.

Next, we note that you did not submit any arguments in support of your claim under section 552.108. Thus, the city has waived its claim under section 552.108. *See Gov't Code 552.301(e)*(governmental body must provide arguments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision Nos. 522 at 4 (1989) (discretionary exceptions in general), 177 (1977) (governmental body may waive statutory predecessor to section 552.108).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes, such as section 143.089(g) of the Local Government Code. You indicate 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).

Section 552.101 excepts from disclosure “information deemed confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. We understand that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the civil service director is required to maintain as part of the police officer’s civil service file, and one that the police department may maintain for its own internal use. Local Gov’t Code § 143.089(a), (g). Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department’s use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director’s designee a person or agency that requests information that is maintained in the fire fighter’s or police officer’s personnel file.

Id. § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer’s personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. 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). *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 may not be withheld under section 552.101 of the act. Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). Chapter 143 prescribes the following types of disciplinary actions: removal,

suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055. Such records are subject to release under chapter 552 of the Government Code. *See id.* § 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*, 851 S.W.2d at 949.

In this case, we understand you to represent that the submitted information, which includes letters of reprimand to the police officer at issue, is held in the personnel file of the officer, and that this file is maintained in accordance with section 143.089(g). A letter of reprimand does not constitute disciplinary action under chapter 143. Based on your representations and our review, we conclude that the submitted information relates to internal investigations that did not result in disciplinary action against the officer. As such, the submitted information is confidential pursuant to section 143.089(g). However, you state that the letters of reprimand were inadvertently placed in the officer's publicly open personnel file. While you do not state that the department has publicly released the letters at issue, we note that section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See* Gov't Code 552.007; Open Records Decision No. 518 at 3 (1989). Because section 143.089 of the Local Government Code expressly prohibits the release of police officer investigations that do not result in disciplinary action, the city must maintain the confidentiality of such information regardless of whether it has been previously released to a member of the public. Accordingly, the submitted information, including the letters of reprimand, must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Finally, we note that the second and third requestors have provided the department with a signed authorization from the named officer to release the responsive records. In some circumstances, a requestor may have a special right of access to information that is otherwise confidential. Section 552.023 of the Government Code states in relevant part:

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

Gov't Code § 552.023. In this instance, the information at issue is confidential under section 143.089(g) of the Local Government Code for reasons other than the protection of

the police officer's privacy interests. Furthermore, while section 143.089(e) grants a police officer or the officer's agent a right of access to information maintained in the officer's civil service file, there is no right of access to information maintained in the officer's internal file. *See* Local Gov't Code § 143.089(e); *see also* Open Records Decision No. 650 at 3 (1996) (confidentiality provision of section 143.089(g) contains no exceptions). Therefore, neither the named officer nor his authorized representative has a special right of access to any portion of the submitted information, and it must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. As we are able to make this determination, we need not address your remaining arguments against disclosure.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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. Pearle
Assistant Attorney General
Open Records Division

MAP/krl

Ref: ID# 263269

Enc. Submitted documents

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