



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2006

Mr. Albert López
Attorney for the City of Laredo
14310 Northbrook Drive, Suite 110
San Antonio, Texas 78232

OR2006-13240

Dear Mr. López:

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# 264196.

The City of Laredo (the "city"), which you represent, received a request for twenty-one categories of information pertaining to eighteen named police officers and a named individual. You state that the city has released some information to the requestor. You claim that a portion of the submitted information is not subject to the Act. You claim that the submitted information is excepted from disclosure under sections 552.026, 552.101, 552.102, 552.114, 552.115, 552.117, 552.119, 552.130, 552.140, and 552.147 of the Government Code and privileged under Rule 504 of the Texas Rules of Evidence.¹ We have considered your arguments and reviewed the submitted information.

We first address your argument that a portion of the submitted information is not subject to the Act. You characterize the submitted e-mail communications as being purely personal in nature. The Act is only applicable to "public information." *See* Gov't Code § 552.021. Section 552.002(a) defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental

¹We note that section 552.022 of the Government Code, which you also claim, is not an exception to disclosure. Section 552.022 provides for the required public disclosure of eighteen categories of information unless the information is expressly confidential by law or, in the case of information encompassed by section 552.022(a)(1), excepted from disclosure under section 552.108. *See* Gov't Code § 552.022(a)(1)-(18).

body owns the information or has a right of access to it.” *Id.* § 552.002(a). Information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if it is maintained for a governmental body, the governmental body owns or has a right of access to the information, and the information pertains to the transaction of official business. *See* Open Records Decision No. 462 (1987).

You contend that the e-mails at issue were not collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by or of the city. Based on your representations and our review of the e-mails at issue, we agree that these communications are not related to the transaction of official city business and therefore do not constitute “public information” of the city. Consequently, the city is not required to disclose the submitted e-mail communications under the Act.² *Cf.* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources).

Next, we note that you claim the city sought clarification of the portion of the request pertaining to “911 dropped calls.” *See* Gov’t Code § 552.222 (providing that if request for information is unclear or overbroad, governmental body may ask requestor to clarify request). You informed us in your September 11, 2006 correspondence that the requestor had clarified this portion of the requests and you claimed that the city would “respond within the time allowed by law.” As you have not submitted this responsive information for our review or submitted any comments objecting to its release, we assume that the city has released this information to the requestor. If the city has not released such information, the city must do so at this time. *See id.* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible under circumstances).

Section 552.101 of the Government Code exempts 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. The City of Laredo 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).

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

²As our ruling is dispositive, we need not address your arguments under Rule 504 of the Texas Rules of Evidence and section 552.101 of the Government Code in conjunction with common law privacy for this information.

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).³ *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 the Act. *See id.* § 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 inform us that some of the submitted information is maintained in the police department's internal files concerning the officers at issue, and that these investigations did not result in disciplinary action. Based on your representations and our review of the records at issue, we agree that this information, 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.⁴

Section 552.101 also encompasses section 1701.306 of the Occupations Code. The remaining submitted information contains an L-3 form (Declaration of Psychological and Emotional Health), which is required by the Texas Commission on Law Enforcement Officer Standards and Education (the “commission”). Section 1701.306 of the Occupations Code provides as follows:

- (a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

³Chapter 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.

⁴As our ruling on this issue is dispositive, we need not address your remaining arguments for this information.

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). We agree that the submitted L-3 form is confidential under section 1701.306 of the Occupations Code, and must be withheld under section 552.101 of the Government Code.

The remaining submitted information contains an ST-3 accident report form, completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In the present request, the requestor has not provided the required information. Accordingly, the city must withhold the submitted accident report form pursuant to section 552.101 in conjunction with section 550.065(c) of the Transportation Code.

Section 552.101 also encompasses the doctrine of common law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of

information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Here, the request seeks in part all driving while intoxicated reports pertaining to a named individual. As such, this portion of the request implicates that individual's right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant for a driving while intoxicated offense, the city must withhold such information under section 552.101 in conjunction with common law privacy.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must withhold the submitted L-3 form under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The city must withhold the submitted ST-3 accident report form under section 552.101 in conjunction with section 550.065(c) of the Transportation Code. To the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant for a driving while intoxicated offense, the city must withhold such information under section 552.101 in conjunction with common law privacy.

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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 264196

Enc. Submitted documents

c: Ms. Julie Daffern
Reporter
Laredo Morning Times
111 Esperanza Drive
Laredo, Texas 78043
(w/o enclosures)