



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2007

Ms. Julia Gannaway
Lynn Pham & Ross, LLP
1320 South University Drive Suite 720
Fort Worth, Texas 76107

OR2007-02958

Dear Ms. Gannaway:

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# 274063.

The City of Waxahachie (the "city"), which you represent, received a request for 2006 goal statements made by two named police officers. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 143.089 of the Local Government Code provides in part:

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the firefighter or police officer by a supervisor.

...

(g) 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.

Local Gov't Code § 143.089(a), (g).¹ Thus, section 143.089 provides for the existence of two different types of personnel files relating to a police officer, including one that must be maintained under section 143.089(a) as part of the officer's civil service file and another that the police department may maintain under section 143.089(g) for its own internal use. Information contained in the civil service file maintained under section 143.089(a) is subject to the Act and must be released, unless the information falls within an exception to disclosure. *See id.* § 143.089(f). Information contained in a departmental file maintained under section 143.089(g) is confidential under section 552.101 of the Government Code and may not be released. *See City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App. – Austin 1993, writ denied); *but see City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App. – San Antonio 2000, no pet. h.) (restricting confidentiality under Local Gov't Code § 143.089(g) to “information reasonably related to a police officer's or fire fighter's employment relationship”).

You state that the submitted documents are held in the respective civil service files of the two named police officers under section 143.089(a). You contend that these documents do not fall within any of the categories of information that must be placed in the officers' civil service files. *See* Local Gov't Code § 143.089(a)(1)-(3). You ask whether information that is not required to be held in the officers' civil service files should be removed and placed in files maintained by the police department under section 143.089(g). We note that although section 143.089(a) does, in fact, provide an exclusive list of the information that is *required* to be maintained in the civil service file, the statute does not clearly prohibit the inclusion

¹You inform us that the city is a civil service municipality under chapter 143 of the Local Government Code.

of the information at issue in that file. *Cf.* Open Records Decision No. 525 at 4 (1989) (information cannot be withheld from public disclosure by negative implication simply because a statute designates other specific information as public information). Moreover, all information held in a civil service file under section 143.089(a) is subject to release under the Act. *Id.* § 143.089(f). Therefore, because the information at issue is held in the officers' civil service files under section 143.089(a), and you assert no other exception to its disclosure, the city must release the submitted information to the requestor.

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).

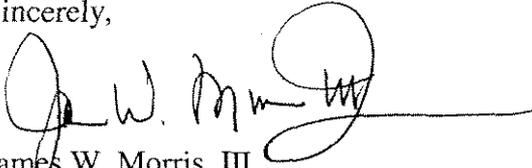
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jb

Ref: ID# 274063

Enc: Submitted documents

c: Mr. Lance F. Wyatt
Law Office of Lance F. Wyatt, PLLC
2201 North Collins Street Suite 149
Arlington, Texas 76011
(w/o enclosures)