



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2007

Mr. Jeff Bray
Senior Legal Advisor
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2007-06121

Dear Mr. Bray:

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# 278819.

The Plano Police Department (the "department") received a request for all information pertaining to a named police officer. You state that you have released some of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code 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. You seek to withhold the submitted information under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.¹ 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 as part of the officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The officer's civil service file must contain certain specified items,

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

including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(3). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055.

Subsection (g) of section 143.089 authorizes the police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. Section 143.089(g) provides as follows:

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). 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).

In this instance, you state that the submitted information, which consists solely of periodic evaluations of the named officer, was taken from the officer's civil service file maintained under section 143.089(a). Thus, you represent that the department is seeking a ruling on information maintained by the Civil Service Commission in the named officer's section 143.089(a) file, not records of the department maintained in the officer's section 143.089(g) file. You assert that because the evaluations at issue contain references to records maintained in the officer's internal department section 143.089(g) file, the evaluations should be removed from the section 143.089(a) file and placed into the section 143.089(g) file. We disagree. Periodic evaluations of officers are properly maintained in the section 143.089(a) civil service file. *Id.* § 143.089(a)(3) (stating that an officer's civil service file must contain any letter, memorandum, or document related to the periodic evaluation of the officer by a supervisor). Further, the fact that the evaluations at issue reference information that is contained in the officer's confidential section 143.089(g) file does not make the evaluations or any portion of their contents confidential. *See* Open Records Decision Nos. 658 at 4 (1998) (stating that statutory confidentiality provision must be express, and a confidentiality requirement will not be implied from the statutory structure), 478 at 2 (1987) (stating that as a general rule, statutory confidentiality requires express language making certain information confidential or stating that information shall

not be released to the public). Accordingly, no portion of the submitted evaluations is confidential under section 143.089(g), and the evaluations must be released to the requestor in their entirety.

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).

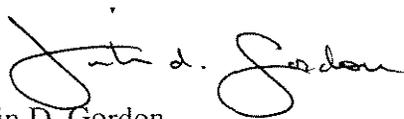
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 "Justin D. Gordon". The signature is fluid and cursive, with the first name "Justin" and last name "Gordon" clearly legible.

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 278819

Enc. Submitted documents

c: Mr. Roger Barone
4408 Buchanan Drive
Plano, Texas 75024
(w/o enclosures)