



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2007

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046

OR2007-12444

Dear Mr. Mann:

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 #289915.

The City of Garland Police Department (the "department") received a request for a list of all traffic accidents involving officers from 2005 to the present, including "full names of the officers involved, badge number, rank, date of accident, status, fault, status of any lawsuit filed or pending, and any settlement." You state that while the department does not possess a list that contains all of the information that has been requested, it does maintain a list containing some of the requested information.¹ You have submitted this list for our review, and you claim that the information you have marked in blue is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have submitted some information that is not responsive to the instant request. Although the requestor asks for several categories of information pertaining to traffic accidents involving police officers, he does not ask for information detailing the

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

disciplinary action taken by the department against the officers as a result of these accidents. Accordingly, we find that the category marked “action taken” is not responsive to the present request. The department need not release non-responsive information in response to this request and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). The “charged” category, which you have outlined in blue, is responsive to the request for fault information regarding these accidents, so we will address your argument for this 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 information protected by other statutes, such as section 143.089 of the Local Government Code. Section 143.089 of the Local Government Code provides for the existence of two different types of personnel files relating to a police officer: 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, including commendations, periodic evaluations by the police officer’s supervisor, and documents relating to any misconduct in any instance in which the police department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051- .055.

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). *See Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no petition). All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or are in the possession of the police department because of its investigation into a police officer’s misconduct, and the police department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* at 119, 121. Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089. *See Local Gov’t Code* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information 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. *See Local Gov’t Code* § 143.089(b). Likewise, information maintained in a police department’s personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You assert that the information in the “charged” column within the submitted list is confidential under section 143.089(g) because it is “derived from . . . the [d]epartment’s confidential files.” Thus, the submitted list itself is not maintained in the department’s section 143.089(g) files. Further, information regarding officer accidents is contained within administrative and law enforcement records, separate and apart from the section 143.089(g) files. We have stated, and the courts have agreed, that a governmental body cannot engraft the confidentiality of section 143.089(g) upon information that exists independently from those files. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 at 563 (Tex. App.—San Antonio 2000, pet. denied) (affirming that if the responsive records exist outside the section 143.089(g) file, the information would be subject to disclosure under the [Act];” *see also* Open Records Decision Nos. 658 (1998), 478 (1987) (stating that statutory confidentiality must be express and will not be implied from statutory scheme). Accordingly, the “charged” column must be released 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).

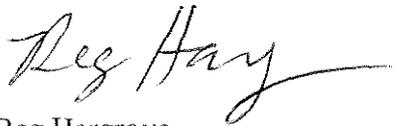
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 cursive script that reads "Reg Hargrove". The signature is written in black ink and has a long, sweeping underline that extends to the right.

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 289915

Enc. Submitted documents

c: Mr. Bennett Cunningham J.D.
CBS11
5233 Bridge Street
Fort Worth, Texas 76103
(w/o enclosures)