



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2008

Mr. Christopher Gregg
City Attorney
City of League City
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2008-00854

Dear Mr. Gregg:

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# 299764.

The City of League City (the "city") received a request for a list of all cellular telephone accounts paid or reimbursed by the city, and a list of what city employee is assigned to each cellular telephone number. You state that you have released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code 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 that is made confidential by other statutes. Section 143.089 of the Local Government Code contemplates two different types of personnel files, a police officer's or a fire fighter's civil service file that a city's civil service director is required to maintain, and an internal file that the police department or the fire department may maintain for its own use. Local Gov't Code § 143.089(a), (g). We understand that the city is a civil service city under chapter 143 of the Local Government Code.

In cases in which a police department or a fire department (the "department") investigates an officer's or a fire fighter's misconduct and takes disciplinary action against the employee, 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 employee's civil service file maintained under

section 143.089(a).¹ *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 an officer’s or a fire fighter’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 chapter 552 of the Government Code. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to an officer’s or a fire fighter’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 an officer’s or a fire fighter’s employment relationship with the department and that is maintained in a 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 indicate that Exhibit A is contained in the department’s personnel files for each of the named fire fighters and that this information is maintained under section 143.089(g). Based on your representations and our review of the submitted information, we agree that the cellular telephone numbers belonging to the fire fighters, which you have marked, are confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.² However, with regard to the SWAT truck cellular telephone number, you have not identified any particular officer or fire fighter to whom this information pertains. Therefore, we are unable to determine that this number is in fact contained within a peace officer’s or fire fighter’s internal file maintained under section 143.089(g). Accordingly, the SWAT truck cellular telephone number is not confidential under section 143.089(g) and may not be withheld under section 552.101 of the Government Code.

We address your argument under section 552.108 for the SWAT truck cellular telephone number. Section 552.108 provides in part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

¹Chapter 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.

²As our ruling is dispositive, we need not address your remaining arguments with regard to this information.

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). To claim this exception, a governmental body must explain how and why release of the requested information would interfere with law enforcement and crime prevention. *Id.* §§ 552.108(b)(1), .301; Open Records Decision No. 562 at 10 (1990). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984). Section 552.108(b) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin, 2002, no pet.). We understand you to assert that release of the SWAT cellular telephone number would interfere with law enforcement responsibilities for the reasons set forth in Open Records Decision No. 506 (1988). In Open Records Decision No. 506, we determined that the statutory predecessor to section 552.108(b) excepted from disclosure “the cellular mobile phone number assigned to [Harris C]ounty officials and employees with specific law enforcement responsibilities.” Open Records Decision No. 506 at 2. We noted that the purpose of the cellular telephone was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* Therefore, upon review of your arguments and the information at issue, we find that the city may withhold the SWAT truck cellular telephone number you have marked in Exhibit A under section 552.108(b)(1) of the Government Code.³

We now turn to the information in Exhibit B, which you seek to withhold under section 552.102 of the Government Code. Section 552.102(a) excepts from required public disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find

³As our ruling is dispositive, we need not address your remaining argument under section 552.117 of the Government Code.

that the information contained in Exhibit B is not intimate or embarrassing, and therefore, is not confidential under section 552.101 in conjunction with common-law privacy. As you raise no other arguments against the disclosure of this information, it must be released.

In summary, the city must withhold the fire fighters' cellular telephone numbers contained in Exhibit A, which you have marked, under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. The SWAT truck cellular telephone number contained in Exhibit A may be withheld under section 552.108(b)(1) of the Government Code. The remaining information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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 "Jordan Johnson".

Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/jb

Ref: ID# 299764

Enc. Submitted documents

c: Ms. Sarah McDonald
The Galveston County Daily News
7800 Emmett F. Lowry Expressway
Texas City, Texas 77591
(w/o enclosures)