



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 29, 2008

Mr. Christopher Gregg  
Gregg and Gregg  
16055 Space Center Boulevard, Suite 150  
Houston, Texas 77062

OR2008-01373

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 #300550.

The City of League City (the "city"), which you represent, received a request for all cellular phone bills paid for or reimbursed by the city over the past six months. You state that you are releasing a portion of the responsive information to the requestor. You claim that the cellular bills pertaining to the city's Police Department, Fire Department, and EMS Department are excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the present request is for cellular phone bills only. In addition to the phone bills at issue, you have submitted administrative documents and photocopies of checks for review that are not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information, which we have marked, in response to this request.

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 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).<sup>1</sup> *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 state that Exhibit A, which consists of cellular telephone bills, is maintained by the city's police department, fire department, and EMS department, and that this information is maintained under section 143.089(g). We first note that section 143.089 only applies to records of police and fire departments. *See* Local Gov't Code § 143.089(a). Accordingly, none of the bills pertaining to phones used by members of the EMS department are subject to section 143.089(g). We also note that you have provided this office with documentation showing that payment for the bills at issue was approved by the city's finance department. Thus, the city's own documentation demonstrates that the city uses the submitted information for purposes beyond the evaluation of police or fire department personnel. Since these records are clearly maintained elsewhere than a fire fighter's or police officers's personnel file, the city may not engraft the confidentiality afforded to records under section 143.089(g)

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<sup>1</sup>Chapter 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.

to other records that exist independently of departmental files. Furthermore, we note that some of the bills at issue pertain to multiple city employees and officers, and some bills pertain to phone numbers that are not associated with any particular officer at all. You have not explained how these bills are maintained within any specific fire fighter's or police officer's personnel file. Accordingly, none of Exhibit A may be withheld under section 552.101 in conjunction with section 143.089(g).

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:

(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 telephone numbers you have highlighted 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.* We note that you have only highlighted four telephone numbers pertaining to fire fighters and one unidentified number to be withheld under section 552.108(b)(1). Although you generally state that these numbers are used by "employees with specific law enforcement duties," you do not explain, nor can we discern, how any of these numbers are used by city employees for actual law enforcement. Upon review, we find that the city has failed to demonstrate how release of the highlighted phone numbers would interfere with law enforcement for purposes of section 552.108(b)(1) of the Government Code.

Section 552.117(a)(2) excepts from public disclosure the current and former home addresses, home telephone numbers, and social security number of a peace officer as defined by

article 2.12 of the Texas Code of Criminal Procedure. *See* Gov't Code § 552.117(a)(2). Although you raise 552.117(a)(2), you do not explain how it is applicable to any of the phone numbers associated with the bills at issue. Furthermore, the present request is only for cellular phone bills paid by the city. Section 552.117 is not applicable to cellular phone numbers that are paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Accordingly, we find that section 552.117 is not applicable to any of the submitted information, and none may be withheld on this basis.

The submitted documents contain information subject to section 552.136 of the Government Code.<sup>2</sup> Section 552.136 provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Accordingly, the city must withhold the cellular telephone account numbers contained within the phone bills pursuant to section 552.136. We have marked representative samples of the numbers that must be withheld under this exception. The remaining information 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 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,

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 300550

Enc. Submitted documents

c: Ms. Sara McDonald  
Reporter  
The Galveston County Daily News  
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(w/o enclosures)