



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2008

Ms. Nicole B. Webster
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2008-05596

Dear Ms. Webster:

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# 309146.

The Waco Police Department (the "department") received a request for information related to a named police officer. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 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 protected by other statutes, including section 143.089 of the Local Government Code. The City of Waco is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police officer's civil service file that a city's civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g).

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).¹ *Abbott v. City of Corpus Christi*, 109

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.

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 a police officer’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. Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to a police officer’s alleged misconduct may not be placed in the officer’s 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 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 Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the information in Exhibit 3 is maintained in the department’s internal file for the officer at issue pursuant to section 143.089(g). We therefore conclude that this information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

Additionally, we note that some of the information submitted in Exhibit 4, which you state is held in the officer’s civil service personnel file under section 143.089(a), relates to internal investigations that did not result in disciplinary actions against the officer under chapter 143 of the Local Government Code. We note that report numbers IA02-108 and IA04-081 did not result in disciplinary actions against the officer at issue. Therefore, these reports, which we have marked, must be removed from the civil service personnel file, placed in the personnel file maintained by the department under section 143.089(g), and withheld under section 552.101 of the Government Code. Further, we are unable to determine if report number IA02-078 resulted in disciplinary action against the officer at issue. Therefore, to the extent that report number IA02-078 did not result in disciplinary action against the officer, it must be removed from the civil service personnel file, placed in the personnel file maintained by the department under section 143.089(g), and withheld under section 552.101 of the Government Code. To the extent report number IA02-078 is not confidential under section 143.089(g), we address your arguments to withhold the information in the report, as well as the remaining documents in Exhibit 4.

Section 552.101 also encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate

this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Upon review, the department must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Local Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure "information that relates to the home address, home telephone number, or social security number" of a peace officer, or information that reveals whether the peace officer has family members, regardless of whether the officer complies with section 552.024 or section 552.1175. Gov't Code § 552.117(a)(2). Accordingly, we conclude that the department must withhold some of the remaining information in Exhibit 4, which we have marked, pursuant to section 552.117(a)(2).

We also note that some of the information in Exhibit 4 may be excepted from disclosure under section 552.1175 of the Government Code.² Section 552.1175 provides in part the following:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(b). You do not inform this office, nor does any of the submitted information indicate, whether the officer at issue notified the department of his election of confidentiality for this information in accordance with subsections 552.1175(b)(1) and (2). Accordingly, the department must withhold the information we have marked under section 552.1175 if the officer elected to restrict access to this information in accordance with section 552.1175(b). If no election was made, the department must release the information at issue.

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

Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information in Exhibit 4, which you have highlighted, as well as the information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the information in Exhibit 3 and report numbers IA02-108 and IA04-081, which we have marked, in Exhibit 4 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. To the extent report number IA02-078 is confidential under section 143.089(g), it must be withheld under section 552.101. The department must withhold the marked information in Exhibit 4 under section 552.101 in conjunction with section 411.083 of the Local Government Code, as well as sections 552.117 and 552.130 of the Government Code. The department must withhold the information we have marked under section 552.1175 if the officer elected to restrict access to this information. The remaining information must be released.³

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,

³ We note that the submitted information contains social security numbers subject to section 552.147 of the Government Code. Section 552.147 (b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147. As our ruling is dispositive for the information at issue, we need not address your remaining arguments against disclosure.

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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/eeg

Ref: ID# 309146

Enc. Submitted documents

c: Mr. David Fernandez, Jr.
Attorney at Law
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(w/o enclosures)