



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2008

Mr. Tomas P. Saenz
City Secretary
City of Beeville
400 North Washington Street
Beeville, Texas 78102-3938

OR2008-12393

Dear Mr. Saenz:

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# 320090.

The Beeville Police Department (the "department") received a request for several categories of information pertaining to a specified incident, the department's policies and procedures that were in effect on a specified date, and the personnel files of two police officers. We understand you to claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor excluded from his request W-4, I-9, and F-5 forms, social security numbers, personal bank account information, dates of birth, medical records, home addresses, home telephone numbers, and cellular telephone numbers. Therefore, this information is not responsive to this request and our ruling does not address it.

Next, we must address the department's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(A), (D). You represent that the department received the request at issue on June 4, 2008. However, you did not provide this office with a copy of the specific information requested until July 31, 2008. Thus, the department has failed to comply with the requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the

requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Although you raise sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the interests of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 (1991), 469 (1987). You inform us that the District Attorney's Office of the 156th Judicial District of Texas (the "district attorney") objects to the release of the information at issue. However, the district attorney has informed this office that it no longer has a law enforcement or litigation interest in the submitted information. Thus, the department has not demonstrated a compelling reason to withhold the submitted information under sections 552.103 and 552.108 of the Government Code.

We note that the district attorney has informed this office that the City of Beeville is a civil service city subject chapter 143 of the Local Government Code. 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, such as section 143.089 of the Local Government Code. Because the City of Beeville is a civil service city under chapter 143 of the Local Government Code, it must comply with the requirements of section 143.089 with respect to the personnel files of its police officers. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the 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). 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 which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(3). 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).

We understand that the submitted personnel files are maintained in the department's internal files pursuant to section 143.089(g). Accordingly, based on the district attorney's representation that the department is subject to chapter 143 and our review of the information

at issue, we conclude that the submitted personnel files, which we have marked, are confidential pursuant to section 143.089(g) of the Local Government Code. Therefore, the department must withhold the marked personnel files from the requestor. We also note that under section 143.089(g), the department is required to refer a requestor who requests information maintained in a file under section 143.089(g) to the civil service director or the director's designee. Gov't Code § 143.089(g).

Next, we note that the remaining information contains the personal information of a department officer that is excepted from disclosure under section 552.117(a)(2) of the Government Code.¹ Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.² *Id.* § 552.117(a)(2). Thus, the department must withhold the information we have marked in the remaining information under section 552.117(a)(2).

Next, we note that a portion of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *Id.* § 552.130(a)(1). Accordingly, the department must withhold the Texas driver's license information we have marked in the remaining information under section 552.130.

We note that the remaining information also contains an insurance policy number. Section 552.136 of the Government Code provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

Id. § 552.136. We have marked the insurance policy number that must be withheld under section 552.136 of the Government Code.

In summary, the department must withhold the personnel records we have marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The department must also withhold the information we have marked under sections 552.117(a)(2), 552.130 and 552.136 of the Government Code. 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). If the governmental body does not file suit over 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 320090

Enc. Submitted documents

c: Mr. James Earl Teague, Esq.
c/o Mr. Tomas P. Saenz
City Secretary
City of Beeville
400 North Washington Street
Beeville, Texas 78102-3938
(w/o enclosures)