



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2009

Mr. Charles Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 7823-3966

OR2009-04099

Dear Mr. Weir:

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# 339484 (San Antonio ORR 2008-2410).

The San Antonio Police Department (the "department") received a request for a specified incident report; the related internal affairs investigation file, dispatch records, recordings, photographs, and correspondence; and the department's liability insurance policy. You state that the department is forwarding the incident report to the requestor. You claim that the submitted information 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 the department has not submitted information responsive to some of the categories of data requested. To the extent that such information exists, we presume that the department has released it. If not, the department must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (stating that governing body must produce public information promptly).

Next, we must address the department's obligations under section 552.301 of the Government Code, which 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(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Under section 552.301(e), a governmental

body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, the department received the request for information on January 2, 2009 but did not request a ruling or submit the requested information for our review until February 3, 2009. Consequently, we find that the department failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural 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 id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision No. 150 (1977). Section 552.101 can provide a compelling reason to overcome this presumption; therefore, we will consider this section.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that is made confidential by statute. Gov't Code § 552.101. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code, which 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. *See* Local Gov't Code § 143.089(a), (g). We note that the City of San Antonio is a civil service city under chapter 143 of the Local Government Code.

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 *See 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 a police officer's

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055.

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* 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 his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. *Id.* § 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 General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted internal affairs file is contained in the department's personnel files for the named officer and that this information is maintained under section 143.089(g). We note that the information at issue relates to an investigation of misconduct that resulted in the suspension of the officer to whom the information pertains. Therefore, this information is subject to section 143.089(a)(2) and must also be maintained in the officer's civil service file under section 143.089(a), where it is subject to release. You further state that the request has been forwarded to the San Antonio Fire Fighter and Police Officers Civil Service Commission.² Therefore, we agree that the information relating to the internal affairs investigation maintained in the department's file is confidential under section 143.089(g) of the Local Government Code and must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.101 also encompasses section 772.318 of the Health and Safety Code. You contend that the originating telephone number of the 9-1-1 caller in the submitted case record is confidential pursuant to section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand the City of San Antonio to be part of an emergency communication district established under section 772.318.³ You state that the telephone number was provided by the Bexar Metro 9-1-1 Network District's 9-1-1 system. Thus, based on your representations and our review, we agree that the telephone number must be withheld from disclosure under section 552.101 of the Government Code

²Section 143.089(g) requires a police or fire department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

³Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

in conjunction with section 772.318 of the Health and Safety Code. However, you have not demonstrated how section 772.318 applies to the remaining information in the case record. As you raise no other exception to disclosure for this information, the remaining information in the case record must be released.

In summary, (1) the department must withhold the submitted internal affairs investigation file under section 552.101 of the Government Code in conjunction with 143.089(g) of the Local Government Code; and (2) the department must withhold the telephone number of the 9-1-1 caller under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/rl

Ref: ID# 339484

Enc. Submitted documents

cc: Requestor
(w/o enclosures)