



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2009

Mr. Leonard V. Schneider
City Attorney for the City of League City
Ross, Banks, May, Cron & Calvin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2009-13486

Dear Mr. Schneider:

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# 357144 (League City #09-291).

The City of League City (the "city"), which you represent, received a request for the complaint records of two specified city police officers and a police report from a specified date. You state you have released some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 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 exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code for the submitted personnel records in Exhibit B. You state the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. *See* 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)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. 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). *See Abbott v. 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 are in the 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 may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See Local Gov't Code* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information 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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the information submitted as Exhibit B is maintained in the city police department's internal files as authorized under section 143.089(g) of the Local Government Code. Based on this representation and our review of the information at issue, we agree the information at issue is confidential pursuant to section 143.089(g). Accordingly, the city must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.¹

We now address your argument under section 552.108 of the Government Code for a portion of the information in Exhibit A. Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime [.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You claim section 552.108 for the narrative portion of the requested police report submitted as Exhibit A and state this information concerns a pending criminal investigation. Based on your representations and our review, we determine the release of the narrative portion of Exhibit A would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531

¹As our ruling is dispositive, we need not address your remaining arguments for this information.

S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the city may withhold the information we have marked under section 552.108(a)(1).

In summary, the city must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city may withhold the information we have marked in Exhibit A under section 552.108(a)(1) of the Government Code.

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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 357144

Enc. Submitted documents

c: Requestor
(w/o enclosures)