



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2010

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053-4045

OR2010-04625

Dear Mr. Alcorn:

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# 374725.

The Grand Prairie Police Department (the "department") received a request for "[a]ll reports, video, and audio recordings" relating to a specified incident, including "all Internal Affairs Reports" associated with two named department officers. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the request for information includes "[a]ll reports, video, and audio recordings" related to a particular incident, which you acknowledge resulted in criminal investigations. You inform us the request for information was received by the department's administrative investigations officer. You state this particular department employee is "not involved in the criminal cases[,]" but that information relating to those criminal cases "should be available elsewhere[.]" Generally, a request for public information need not be addressed to the officer of public information of a governmental body to be a valid request under the Act. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974); *see also*

¹Although you raise section 552.108 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you have withdrawn this exception. *See* Gov't Code §§ 552.301, .302.

Gov't Code § 552.202 (each department head of governmental body is an agent of officer for public information for purposes of receiving requests under Act). The Act requires a request to be reasonably identifiable as a request for public records. *See* Open Records Decision No. 497 (1988). We note the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on behalf of the governmental body that receives the request. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control, or to which it has access. *See* Open Records Decision No. 561 at 8-9 (1990).

The instant request was received by the department. Thus, any information the department maintains or has access to is responsive to the request. We note information responsive to the request is not limited to information within the possession or control of any particular department employee. Rather, the responsive information encompasses any information within the department's possession or control, or to which it has access. Therefore, to the extent any additional "reports, video and audio recordings" pertaining to the incident in question were maintained by the department on the date the request was received, including any such information relating to criminal investigations, the department must release such information at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general 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* Gov't Code § 552.301(e). In this instance, you state the department received the request for information on January 13, 2010. Thus, the department's fifteen-business-day deadline was February 4, 2010. However, you did not submit a portion of the requested information until February 5, 2010. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we find the department failed to comply with the requirements of section 552.301(e) in regards to a portion of the submitted information.

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

information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). As your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will address your argument under this exception for the information at issue, as well as for the information that was timely submitted.

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 made confidential by statute, such as section 143.089 of the Local Government Code. You state the City of Grand Prairie 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 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). 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). *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 misconduct and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055. 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 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 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. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the department maintains the submitted information in the department's internal files pursuant to section 143.089(g). You state this information relates to an internal investigation that did not result in disciplinary action. We note, however, the submitted information includes law enforcement records, including a 9-1-1 call dispatch report and audio recording, which are also maintained separate and apart from the internal affairs investigation. The present request does not specifically seek only information from the officer's department personnel file. Instead, the request seeks all "reports, video, and audio recordings" relating to the incident from which the internal affairs investigation arose, in addition to related internal affairs reports. Because the requestor asks for information about the incident in general, both the officer's personnel file and any copies of the investigatory materials that the department maintains for law enforcement purposes are responsive. The department may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Accordingly, the information that is maintained solely in the department's internal files is excepted from disclosure under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. However, information that is maintained for other law enforcement-related purposes is not confidential under section 143.089(g) of the Local Government Code and may not be withheld from disclosure on this basis. As you raise no further exception to the disclosure of any responsive information maintained separate and apart from the department's internal files, it 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, toll free, at (888) 672-6787.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/rl

Ref: ID# 374725

Enc. Submitted documents

c: Requestor
(w/o enclosures)