



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2010

Mr. Jeff Bray
Police Legal Advisor
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2010-04892

Dear Mr. Bray:

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# 375129.

The Plano Police Department (the "department") received five requests from five different requestors for information pertaining to a specified incident or to two named officers who were involved in the specified incident. You provide documentation showing the department has made some records available to two of the requestors.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹ Section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that requestor to the civil service director or the director's designee. In this instance, you provide documentation reflecting that the named officers' civil service files have been made available to the requestors who asked for them.

² We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, you state the information in Exhibits C and D is confidential pursuant to section 552.101 of the Government Code. Section 552.101 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 section 143.089 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 *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made the records confidential. *See id.* at 949; Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files). This confidentiality extends to any records maintained in the internal file that reasonably relate to the police officer's employment relationship. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied).

You state that the information in Exhibits C and D is held in two personnel files maintained by the department under section 143.089(g). Based on your representation and our review of the information at issue, we conclude that the department must withhold Exhibits C and D in their entirety under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Next, you claim the information in Exhibit B is subject to section 552.108 of the Government Code. Section 552.108 provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (a)(2). The protections offered by sections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Section 552.108(a)(1) applies to information that pertains to criminal investigations or prosecutions that are currently pending, while section 552.108(a)(2) protects law

enforcement records pertaining to criminal investigations and prosecutions that have concluded in final results other than convictions or deferred adjudication. A governmental body claiming section 552.108(a)(1) 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). A governmental body that claims section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

You generally state the information in Exhibit B deals with the detection, investigation, or prosecution of crime and "has not yet resulted in conviction or deferred adjudication." However, you do not assert whether Exhibit B pertains to an ongoing criminal investigation. Further, you do not inform us whether Exhibit B pertains to an investigation that has concluded. Therefore, we find you have failed to sufficiently demonstrate the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Consequently, we conclude the department may not withhold Exhibit B under section 552.108 of the Government Code.

We note some of the information in Exhibit B is subject to section 552.130 of the Government Code.³ Section 552.130 excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Exhibit B consists of video recordings and radio traffic recordings that include audio and video of Texas license plate numbers. Thus, the department must withhold the portions of Exhibit B that contain or reveal these license plate numbers under section 552.130 of the Government Code, and must release the remaining information. We note, however, if the department lacks the technical capacity to redact information that is subject to section 552.130 from any of the submitted recordings, then the department must withhold those recordings in their entirety. *See Open Records Decision No. 364* (1983).

In summary, the department must withhold Exhibits C and D under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. To the extent the recordings in Exhibit B contain video or audio of Texas license plate numbers, this information must be withheld under section 552.130 of the Government Code. However, if the department lacks the technical capacity to redact information that is subject to section 552.130 from any of the submitted recordings, then the department must withhold those recordings in their entirety. The remaining information must be released to the individuals who requested that information.

³ The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481* (1987), 480 (1987), 470 (1987).

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,



James McGuire
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 375129

Enc. Submitted documents

c: Requestor
(w/o enclosures)