



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 17, 2010

Ms. Angela M. DeLuca
Assistant City Attorney
City of Bryan
P. O. Box 1000
Bryan, Texas 77805-1000

OR2010-07038

Dear Ms. DeLuca:

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# 379490.

The Bryan Police Department (the "department") received a request for the following fourteen categories of information concerning a named peace officer: 1) complaints filed against the named officer by private citizens, other members of law enforcement, the City of Bryan ("city"), or the department; 2) names of persons interviewed in the course of investigating said complaints; 3) written responses of the named officer to such complaints; 4) final determinations regarding the complaints; 5) letters advising of any disciplinary action related to the complaints; 6) proof that the named officer completed any recommended counseling or corrective training as a result of a complaint being filed against him; 7) the named officer's employment background; 8) the named officer's original application to become a police officer which was submitted to the department; 9) police academy scores and/or evaluations which are in the possession of the department or the city; 10) certificates of completion concerning continuing law enforcement training in the possession of the department and/or city regarding the named officer; 11) evaluations and/or scores concerning continuing law enforcement training in the possession of the department and/or city regarding the named officer; 12) the current salary of the named officer; 13) the current amount of overtime pay accumulated by the officer for the years 2009 and 2010; and 14) specialized units that the named officer has been assigned to while employed by the department. You indicate the department has no information responsive to categories 1

through 6, 9, and 14 of the request. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note one document you submitted is not responsive to the instant request because it was created in response to the request for information.² This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the request.

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 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). 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.³ *Id.* § 143.089(a)(1)-(2). 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).

¹We 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 those records contain substantially different types of information than that submitted to this office.

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

³Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See id.* §§ 143.051-.055.

You assert the documents in Exhibit B, which pertain to the officer's employment relationship with the department, were taken from the department's internal file which is maintained by the department for its own use. Based on your representations and our review of the information at issue, we agree the documents in Exhibit B are confidential pursuant to section 143.089(g). Accordingly, the department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. You explain, however, the documents in Exhibit C were taken from the civil service file of the peace officer at issue which is maintained by the civil service commission.⁴ Accordingly, we will address your arguments for Exhibit C.

Section 552.108(a)(1) of the Government Code exempts 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). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987).*

You have submitted a letter from an attorney for Brazos County stating that a driving while intoxicated ("DWT") case related to a specified person is pending in Brazos County and that release of Exhibit C would interfere with that pending criminal prosecution because the officer whose personnel records are at issue in Exhibit C is a potential witness in the DWI prosecution. You explain that if the information in Exhibit C is released, it could be used to determine the credibility of the officer, his competency to testify, and his qualification as an expert witness. Based on these representations and our review of the information at issue, we conclude the release of Exhibit C would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the department may withhold Exhibit C under section 552.108(a)(1) of the Government Code.⁵

⁴We note section 143.089(g) requires a police department who 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. *Id.* § 143.089(g). We further note it appears for purposes of expediency you have identified responsive records maintained in the officer's section 143.089(a) file and have submitted them as part of this ruling request.

⁵As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In summary, the department 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 department may withhold Exhibit C 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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 379490

Enc. Submitted documents

c: Requestor
(w/o enclosures)