



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2010

Mr. David M. Douglas
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2010-19567

Dear Mr. Douglas:

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# 404488 (Department ID# 10-4535).

The Austin Police Department (the "department") received a request for the yearly performance reports for a named officer since she was commissioned, any information related to disciplinary actions or reprimands taken against the officer, the officer's academic records at the Austin Police Academy (the "academy"), the officer's training and performance evaluations from the academy, and a detailed description of several courses taught to the officer at the academy. You state the department has released most of the requested information. 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.¹

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 protected by other statutes. You state that the City of Austin is a civil service city under chapter 143 of the Local Government

¹We assume that 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.

Code. Section 143.089 of the Local Government Code 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 department investigates a police officer's misconduct and takes disciplinary action against a police officer, it is required by section 143.089(a)(2) of the Local Government Code 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) of the Local Government Code. *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 of the Local Government Code 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 the Act. *See id.* § 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. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the 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.² *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 information in Exhibits A and B is contained in the department's internal personnel file for the named officer and that this information is maintained under section 143.089(g). Accordingly, we agree the information in Exhibits A and B 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 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid

²Section 143.089(g) of the Local Government Code requires a police department that receives a request for information maintained in a personnel file under section 143.089(g) to refer that requestor to the civil service director or the director's designee. Local Gov't Code § 143.089(g).

detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the information in Exhibit C pertains to lesson plans for instruction on patrol procedures, traffic stops, and crowd management. You state that release of this information would endanger police officers and interfere with law enforcement by providing criminals with information on specific tactics utilized by members of the department when conducting police patrols, high risk traffic stops, crowd management, and regular traffic stops. Upon review, we find the department has demonstrated that release of portions of the submitted information, which we have marked, would interfere with law enforcement and crime prevention. Accordingly, the department may withhold the marked information in Exhibit C under section 552.108(b)(1) of the Government Code. However, we find the remaining information in Exhibit C pertains to commonly known investigative procedures and techniques or administrative matters. You have not explained how release of this information would interfere with law enforcement or crime prevention. Therefore, the department may not withhold the remaining information in Exhibit C under section 552.108(b)(1) of the Government Code. As your raise no further exceptions to the disclosure of this information, it must be released.

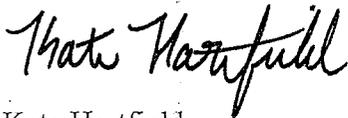
In summary, the department must withhold Exhibits A and B under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The department may withhold the information we have marked in Exhibit C under section 552.108(b)(1) of the Government Code. The remaining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

A handwritten signature in black ink that reads "Kate Hartfield". The signature is written in a cursive, flowing style.

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 404488

Enc. Submitted documents

c: Requestor
(w/o enclosures)