Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Mr. Sherman Collins
Chief of Police
City of Lufkin
300 East Shepherd
P.O. Drawer 190
Lufkin, Texas 75901

OR94-364

Dear Mr. Collins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).[1] Your request was assigned ID# 25096.

The City of Lufkin Police Department received an open records request for information regarding certain officers suspended by the Lufkin Police Department. In particular, the requestor seeks the following information:

1. The names of officers suspended for violating Lufkin Police Department procedure while conducting a drug raid on Locke Alley during February 1994.

2. Any complaints filed against those officers on, after, or before the date of the raid.

You indicate that you released most of the requested information but refused to release the names of the two disciplined officers. You argue that the officer's names are protected under section 552.101 of the Government Code (formerly article 6252-17a, section 3(a)(1), V.T.C.S.). You also indicate that Lufkin is a civil service city under chapter 143 of the Local Government Code.

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[1]The Seventy-third Legislature codified the Open Records Act as chapter 552 of the Government Code and repealed article 6252-17a, V.T.C.S. *See* Acts 1993, 73d Leg., ch. 268, §§ 1, 46. The codification of the Open Records Act in the Government Code is a nonsubstantive codification. *Id.* § 47.

Under section 143.089 of the Local Government Code, the Fire Fighters' and Police Officers' Civil Service Commission (the "commission") is required to maintain a personnel file on each police officer. This personnel file must contain, among other things, any document from the employing department relating to any misconduct by the officer that resulted in disciplinary action by the employing department. Local Gov't Code § 143.089(a)(2). Furthermore, the commission may not release information from an officer's personnel file without obtaining permission from the officer, unless releasing the information is required by the Open Records Act or some other law. *Id.* § 143.089(f); Open Records Decision No. 562 (1990) at 5. If the employing department receives a request for information that must be in an officer's personnel file maintained by the commission, the department must refer the person requesting the information to the commission. *Id.* § 143.089(g). Thus, in this case, the commission must make the officer's names available unless the Open Records Act permits the commission to withhold them.

The Open Records Act requires the release of all information collected, assembled, and maintained by a governmental body unless one of the act's specific exceptions protects the information from disclosure. Gov't Code § 552.021; Open Records Decision No. 514 (1988) at 1-2. You contend that section 552.101 excepts the information from required public disclosure. Section 552.101 provides that "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" is excepted from required public disclosure. Thus, section 552.101 incorporates specific statutes that protect information from public disclosure. *See, e.g.*, Open Records Decision No. 584 (1991) (information concerning welfare recipients made confidential by the Texas Human Resources Code). The exception also applies to information considered private under constitutional or common-law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (information about injuries to intimate body parts protected from disclosure by concepts of constitutional and common-law privacy). In this case, however, you have not identified any statute that protects the names of the officers from disclosure, nor are we aware of any. In addition, we cannot see how the officers' names could be protected under constitutional or common-law privacy. Thus, you may not withhold the officers' names under section 552.101.

You also argue that the nature of the officers' assignments justifies withholding the names of the officers, and we assume that you intended to raise section 552.108(b). Section 552.108(b) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . ." For section 552.108(b) to except information from disclosure, the governmental body must show that releasing the information would unduly interfere with law enforcement. However, this office has previously concluded that section 552.108 does not except from disclosure general personnel information

regarding police officers, including the names of officers about whom complaints have been filed. Open Records Decision No. 562 (1990) at 10. The details of a complaint may be withheld if releasing them would unduly interfere with law enforcement, but the name of the accused officer may not be withheld. *Id.* Therefore, you must release the officers' names.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

Margaret A. Roll
Assistant Attorney General
Open Government Section

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Ref.: ID# 25096

Enclosures: Submitted documents

cc: Mr. Phil Latham
Editor
The Lufkin Daily News
P.O. Box 1089
Lufkin, Texas 75901