



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 25, 1994

Ms. Helen M. Gros  
Senior Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR94-407

Dear Ms. Gros:

The City of Houston (the "city") has received various requests for information from the same individual, under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).<sup>1</sup> The city's correspondence with the requestor indicates that most of the requested information has already been disclosed. This office addressed some of the requests in Open Records Letter No. 93-224 (1993). The city has not supplied information which that decision determined is excepted from disclosure. The city has also not supplied information that it indicates does not exist. This office has been asked to decide if the remaining requested information is excepted from disclosure. This request was assigned ID# 22418.

Although this office determined in Open Records Letter No. 93-224 (1993) that certain information held by the city is excepted from disclosure, the requestor has continued to request this information. The city is not required to seek another opinion from this office concerning the applicability of an exception to the very same information when there has been no change of circumstances. Gov't Code § 552.301; Open Records Decision No. 435 (1986) at 2. The city indicates that the requestor has also repeatedly asked for information which does not exist. We note that the city has an obligation to make a good faith effort to locate requested records. Open Records Decision No. 561 (1990) at 8. However, the city is not obligated to provide information which is not in its

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<sup>1</sup>We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

possession or to compile new information.<sup>2</sup> Open Records Decision Nos. 561 (1990) at 9 (city does not have to obtain new information); 483 (1987) at 2; 452 (1986) at 3 (open records request applies to information in existence when request is received); 362 (1983) at 2 (city does not have to supply information which does not exist). The requestor has also repeatedly asked for copies of the same document. Although these requests may be repetitive, the requests may not be ignored. Open Records Decision No. 512 (1988) (governmental body may not deny repeated requests for information).

It is our understanding that the requestor has asked for the following information which the city seeks to withhold:<sup>3</sup>

(1) information concerning the police department's policy, training and procedures relating to investigations of shootings.

(2) information about two named police officers, including information about their insurance and benefits; education, certificates, licenses, professional awards; character references; memberships in any organizations; dates of employment; and any disciplinary actions, dismissals or demotions. Also requested are the employment histories of both officers, including the names, addresses and telephone numbers of any person or business who employed one of the named officers during 1992.

The city seeks to withhold the policy and the 1992 employment information under section 552.108 of the Open Records Act, which provides an exception from public disclosure for:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . .

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<sup>2</sup>The city should, of course, clearly inform the requestor that such information is not in the city's possession or does not exist.

<sup>3</sup>We note that, in the city's response to the requestor, he was advised to write directly to the city's personnel director for civil service information about the two named police officers. However, it is the city's responsibility to pass this request to the proper department within the city. Gov't Code § 552.001(b); Open Records Decision Nos. 497 (1988) at 1-3 (a written communication which can reasonably be judged a request for public information falls under the Open Records Act); 44 (1974) at 2 (a written request for information "directed to a reasonable person in a position of authority" in the governmental body is a proper request).

Since this office was sent a copy of the requestor's letter with the city's response, we will address this request.

(b) An 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 this exception to apply, the governmental body must demonstrate how release of the information would unduly interfere with law enforcement or crime prevention. Open Records Decision Nos. 518 (1989) at 6 (if not apparent on the face of the information, governmental body must show how release will unduly interfere with law enforcement or crime prevention); 434 (1986) at 2 (whether release will interfere with law enforcement). In Open Records Decision No. 531 (1989), this office held that this section allowed a police department to withhold portions of its procedures giving guidelines on the use of force, because such a release would interfere with law enforcement or crime prevention. This office also concluded, however, that the portions of the procedures which relate to generally known common-law rules, constitutional limitations or Penal Code provisions are not protected. *Id.* at 2-3. We have reviewed the submitted policy and conclude that *most of the information is generally known. We have marked the portions of the policy that may be withheld under section 552.108. The unmarked provisions must be disclosed to the requestor.*

The city contends that the names, addresses and telephone numbers of any person or business which employed the named officer in 1992 are also excepted from disclosure under section 552.108. In Open Records Decision No. 456 (1987), we determined that information concerning a police officer's "off-duty" employment which revealed when the officer would be providing security at a certain business could be withheld because this could undermine law enforcement. Since the information would reveal which businesses took extra security precautions, and by negative implication, which did not, release of this information could affect a department's crime prevention efforts. The city argues that this opinion is applicable to the present situation, but has provided no facts to support this argument. Because the city has not met its burden of demonstrating that this information is protected by section 552.108, it must be disclosed.

The requestor has also asked for information that may be contained in the named police officers' civil service files or in internal personnel files maintained by the city. Some of this information may be exempt under section 552.101, which prohibits release of information made confidential by other law. Section 143.089 of the Local Government Code provides guidelines for release of information from a police officer's civil service file and an internal personnel file which the department may maintain. The internal file may contain more and different information than what is in the civil service file and is not subject to the same content restrictions as the civil service file.<sup>4</sup> Records

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<sup>4</sup>Section 143.089(g) of the Local Government Code provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police

which are maintained in the department's internal personnel files pursuant to subsection 143.089(g) fall within the section 552.101 exception and are not subject to disclosure. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied); Open Records Decision No. 562 (1990) at 7. The city must not release information that is maintained in the internal personnel file.

However, the requestor has asked for information that may be in the civil service files. Information maintained in civil service files must be released unless some provision of the Open Records Act or other law permits the civil service commission to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 (1990) at 6 (construction of section 143.089(f)).<sup>5</sup> Section 143.089 provides the following guidelines for what must be maintained in an officer's civil service file:

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum, or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to sustain the charge of misconduct.

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(footnote cont'd)

officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

<sup>5</sup> We also note that the city is required to refer any person who requests information maintained in a police officer's civil service file to the civil service commission.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by Subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Since the city has not supplied copies of the requested information for review and has not provided any facts which would indicate the information is subject to an exception from disclosure, we cannot conclude that civil service file information responsive to the request is confidential. *See* Gov't Code § 552.301(b); Attorney General Opinion H-436 at 3 (1974) (governmental body must supply information to provide a sufficient basis for determining that an exception applies); Open Records Decision Nos. 444 (1986) at 5 (public interest in dismissals, demotions and promotions of public employees); 438 (1986) (release of information about complaint); 208 (1978) (release of complaint information).

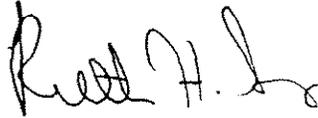
The requestor has also asked for insurance and benefit information; information concerning education, certificates and licenses; character references; employment histories and dates of employment concerning the two named officers. Again, the city has not supplied this information for our review.<sup>6</sup> Since no information about the officers' benefits or insurance has been provided this office, we cannot conclude that any of this information is protected from disclosure. However, we direct your attention to Open Records Decision No. 600 (1992), in which we drew a distinction between benefit plans which are funded in whole or part by the state, and optional benefits funded by the employee. Information about optional benefits funded by the employee is personal financial information which is confidential under section 552.101. Information about benefits which are funded by the state is not confidential. *Id.* at 9-12. The other requested information appears to be related to the officers' job qualifications and education levels. Open Records Decision Nos. 444 (1986) at 3-4 (information in a public employee's personnel file presumed public unless expressly excepted); 329 (1982) (information relating to public employee's age, educational background, previous experience and employment is generally deemed public). The city must release the requested information unless it contains confidential material.

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<sup>6</sup> Although we have not seen the requested material, it is possible that the documents at issue contain home addresses and home telephone numbers. We note that section 552.117(1)(B) provides an exception from disclosure for the officers' home addresses and home telephone numbers.

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 our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy". The signature is fluid and cursive, with the first name "Ruth" being the most prominent.

Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/MRC/rho

Ref.: ID# 22418

Enclosures: Marked documents

cc: Mr. Leon Kendrick  
TDCJ# 971113  
Route 1, Box 100 I-2  
Cotulla, Texas 78014  
(w/o enclosures)