



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 13, 1996

Mr. Hugh W. Davis, Jr.
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311

OR96-1658

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100669.

The City of Fort Worth Civil Service Commission (the "city") received a request for forty-two case files. You inform us that the city will release portions of the requested information. However, you assert that some of the requested files are excepted from required public disclosure based on sections 552.101 and 552.108 of the Government Code. You submitted as a representative sample of the requested information two internal affairs files the city seeks to withhold from public disclosure. In the first, the police officer is appealing the police department's disciplinary action imposed on him. In the second, the finding of misconduct was sustained, but the police officer did not appeal the disciplinary action imposed on him.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law, including information made confidential by statute. Section 143.089(g) reads as follows:

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 officer.

The department shall refer to the director [of the civil-service commission] 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.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil-service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] 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." Local Gov't Code § 143.089(g). In a case involving a newspaper's request for a police department file, the Third Court of Appeals in Austin determined that subsection (g) expressly forbids the release of files maintained under subsection (g) of section 143.089 to anyone under any circumstances. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 952 (Tex. App.--Austin, 1993, writ denied).

In cases in which a police department takes disciplinary action against a police officer, it is required by Local Government code section 143.089(a)(2) to transfer records relating to the investigation and disciplinary action to the civil service commission. Such records may not be withheld under section 552.101 of the Government Code. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6. The files you submitted as a representative sample of the files the city seeks to withhold are of internal investigations that resulted in disciplinary action. Thus, these materials should have been transferred to the civil service commission pursuant to section 143.089(a)(2) and may not be withheld from disclosure under section 552.101 of the Government Code.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[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." Gov't Code § 552.108. Where no criminal investigation or prosecution results from an investigation of a police officer for alleged misconduct, section 552.108 is inapplicable. See *Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982). Apparently, neither of the submitted files involved an investigation that resulted in a criminal prosecution. We therefore conclude that the city may not withhold those files from public disclosure based on section 552.108 of the Government Code.¹

¹In reaching our conclusion here, we 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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 100669

Enclosures: Submitted documents

cc: Ms. Ilorna Robinson-Holbert
African American Summit for Peace, Justice, and Equality
AAS Criminal Justice Committee
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(w/o enclosures)

(Footnote continued)

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.