



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 27, 1996

Mr. Robert J. Gervais  
Assistant City Attorney  
P.O. Box 799  
Galveston, Texas 77553-0779

OR96-1775

Dear Mr. Gervais:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 35171.

The City of Galveston (the "city") received a request for several categories of information. You state that the city has already provided most of the requested information to the requestor. You explain, however, that the city seeks to withhold the police officer's personnel file. You state that this information is excepted from required public disclosure by sections 552.101, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Our review of the submitted material at issue indicates that section 143.089 of the Local Government Code is applicable to the much of the requested documents. Section 143.089 of the Local Government Code works in conjunction with section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the police department is required to maintain as part of the police officer's civil service file, and one that the police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(a)(2) mandates that documents relating to "any misconduct by the fire fighter or police officer" must be placed in a police officer's civil service file "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.” As some of the documents submitted to this office for review may be related to alleged misconduct which resulted in disciplinary action, we assume that those documents are part of the officer’s civil service file.

However, some of the documents may not be a part of the police officer’s civil service file. Section 143.089(g) of the Local Government Code allows for the maintenance of a separate departmental file in addition to the civil service file provided for in section 143.089(a)(2). This separate file is for the department’s own internal use:

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 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).

A request for information contained within the internal file must be referred to the civil service director or his designee. Local Gov’t Code § 143.089(g); *see City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied). Thus, if any of the requested documents are properly held only within the department’s internal file, the request for this information must be referred to the civil service director or his designee.

Because you do not indicate how the requested documents are maintained by the city, we will address your arguments against disclosure. You first assert that certain information contained within the submitted documents is excepted from public disclosure by section 552.117 of the Government Code. You have highlighted some of this information. Section 552.117 provides that information may be withheld if it is

information that relates to the home address, home telephone number, social security number, or that reveals whether the following person has family members:

\* \* \* \*

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

Since Section 552.117 excepts from required disclosure peace officers' home addresses, home telephone numbers, social security numbers, and information revealing whether the officers have family members, this information must be withheld from disclosure. Code Crim. Proc. art. 2.12 (city police officers are "peace officers"); Open Records Decision Nos. 532 (1989), 530 (1989). We have marked a sample of the kind of information that must be withheld under section 552.117.

We also note that section 552.119(a) of the Government Code excepts from required public disclosure "a photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure," with certain exceptions that do not appear relevant here. A photograph that depicts a peace officer may be released only if the peace officer gives written consent to the disclosure. Gov't Code § 552.119(b). Thus, unless the officer has given written consent, you must withhold the photograph of the officer contained in the requested information.

You next argue that certain information within the materials is protected from disclosure by section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." It applies to information made confidential by constitutional and common-law rights of privacy. Section 552.101 also encompasses information protected by other statutes. You assert that the officer's psychological report and IQ evaluation records are confidential. We agree. In Open Records Decision No. 600 (1992), this office concluded that psychological personality tests were protected by a constitutional right of privacy while the results of an IQ test are protected by a common-law right of privacy. The city must, therefore, withhold this information from disclosure. In addition to the evaluations and records themselves, there are other references to these records within the documents. These references must also be withheld.

You also claim that the results of the officer's polygraph evaluation are deemed confidential under article 4413 V.T.C.S. Section 19A(b) of article 4413(29cc), V.T.C.S., provides as follows:

Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

The requested information includes polygraph reports that are deemed confidential by section 19A(b). Additionally, we note several references to the polygraph results within the documents. These references also constitute information acquired from a polygraph examination, and therefore, these references are also confidential under section 19A(b). As

both the polygraph reports and the references to polygraph results are confidential by law, the city must withhold this information from disclosure pursuant to section 552.101.

Moreover, there appear to be other portions of the documents which are protected by privacy and must be withheld pursuant to section 552.101. This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), and information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987). We have reviewed documents and have marked a sample of the information that must be withheld under constitutional or common-law privacy. For your convenience, we have also included for your review a sampling of common types of information deemed confidential that must be withheld.

Section 552.101 also encompasses information protected by other statutes. We note that criminal history report information ("CHRI") generally may not be released. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, if you have CHRI in your possession and it falls within the ambit of these state and federal regulations, you must withhold the CHRI from the requestor.

Finally, you assert that the requested information contains interview summaries and background report investigations which are excepted from disclosure in their entirety by section 552.111. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel

matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. As the documents you seek to withhold relate only to a personnel matter and are factual, they may not be withheld pursuant to section 552.111. We caution, however, that some of the information contained within the interview summaries and background report investigations is confidential, and must not be released.

We are resolving this matter with an 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 should 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,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 35171

Enclosures: Marked documents  
List of Confidential Information

cc: Mr. Jim Mabe  
3114 Seawall Boulevard  
Galveston, Texas 77550  
(w/o enclosures)