



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 21, 1996

Ms. Amy Whitt
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR96-1906

Dear Ms. Whitt:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101247.

The City of Lubbock (the "city") received a request for information concerning a criminal investigation involving a police officer. You state that the city "has released a copy of the case report, but has withheld the supplemental reports and the internal investigation reports." You contend that the information at issue is excepted from disclosure pursuant to section 552.108 of the Government Code.

We note initially that Lubbock is a civil service city and its police department records are subject to the provisions of section 143.089 of the Local Government Code. Some of the records submitted to this office may be part of the police officer's civil service file. Section 143.089 of the Local Government Code provides for the maintenance of a police civil service file and what may be kept in that 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 substantiate the charge of misconduct.

(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.

The requestor is the officer who was the subject of the criminal investigation. Section 143.089(e) states that a police officer "is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file." Section 143.089(e) of the Local Government Code thus lays out a system of *mandatory access* by which a police officer or former police officer may obtain his own civil service records. This mandatory access provision prevails over the chapter 552 exceptions to disclosure, such as the section 552.108 exception. *See* Open Records Decision No. 598 (1991) at 3-4 (provisions of Government Code 552 do not prevail over special rights of access to records). Thus, if any of the records at issue are from the requestor's section 143.089(a) civil service file, you must provide these records to the requestor.

You have described some of the records at issue as internal investigation records. Information that section 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in a police department's internal file, as provided in section 143.089(g):

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.

The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in the department's internal file. The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. You have not marked any of the documents as being section 143.089(g) records. However, if any of the records at issue are section 143.089(g) documents from the police department's internal file, these records are confidential and may not be released.¹

As we have indicated, the civil service file records must be released to the requestor in accordance with the mandatory access provision of section 143.089(e). Documents from the police department's internal file are confidential and must be withheld from disclosure.

As you have raised section 552.108 of the Government Code, we assume that some of the records submitted to this office are neither maintained in the officer's civil service file or the department's internal file. Section 552.108 provides that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" and "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." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). However, information normally found on the front page of an offense report is generally considered public and may not be withheld from disclosure. See generally *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We note, however, that information that identifies a victim of a serious sexual offense is protected by common-law privacy as incorporated by section 552.101 of the Government Code. See Open Records Decision Nos. 440 (1986), 393 (1983). Thus, information that tends to identify the victim in this situation must be redacted from the front page offense report information prior to release to the public.

¹A request for information in the internal file must be referred to the civil service director or his designee. See *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied).

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,

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 Records Division

RHS/rho

Ref.: ID# 101247

Enclosures: Submitted documents

cc: Mr. Craig Lee Booker
(w/o enclosures)