



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 4, 1997

Mr. Stephen R. Alcorn  
Assistant City Attorney  
City of Grand Prairie  
P.O. Box 534045  
Grand Prairie, Texas 75053-4045

OR97-1280

Dear Mr. Alcorn:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106272.

The City of Grand Prairie (the "city") received a request for copies of misconduct/disciplinary actions taken against certain Grand Prairie Police Department officers. You assert that the information is excepted from disclosure pursuant to section 143.089(e) of the Local Government Code as well as section 552.108 of the Government Code. We have considered your arguments and have reviewed the information submitted.

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). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the personnel files maintained under section 143.089(a). 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. Thus, the requested information relating to disciplinary actions placed in the officers' Civil Service personnel file may not be withheld under section 552.101.

You assert that in cases where a disciplinary action has been "accepted or served by the officer," and the documentation reflecting this fact is in the Civil Service file, such materials are not to be disclosed by virtue of section 143.089(e) without the officer's permission. Section 143.089(e) provides:

[t]he fire fighter or police officer is entitled, on request, to a copy of any letter, memorandum or document placed in the person's personnel file. The municipality may charge the fire fighter or police officer a reasonable fee not to exceed actual cost for any copies provided under this subsection.

A reading of the plain language of this provision does not support your conclusion that information concerning a disciplinary action accepted or served by an officer may not be released without permission of the officer. Nor have you cited any other authority for this proposition. We therefore conclude that information concerning a disciplinary action accepted or served by an officer may not be withheld under section 143.089(e) in conjunction with section 552.101 of the Government Code.

We note that section 143.089(f) provides that "[t]he director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law." In Open Records Decision No. 562 (1990) this office found that "subsection (f) does not remove information from scrutiny under the Open Records Act. It merely requires that the consent of the individual be obtained when disclosure of information in the civil service file is not required by the Open Records Act. Information in the civil service personnel file is subject to disclosure unless an exception under the Open Records Act applies." Open Records Decision No. 562 (1990) at 8. You claim that the requested information may be withheld from public disclosure under section 552.108 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; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). You state the records you have submitted to this office "are copies of all disciplinary actions that have been placed in the 'personnel' file of each officer maintained by the Civil Service Director." You further state that some of these actions occurred as the result of a complaint by another officer or a citizen whose names appear in the disciplinary action, and you do not desire to compromise the confidentiality of these individuals. In *Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied), the court held that where no criminal investigation or prosecution results from an investigation of a police officer for alleged misconduct, section 552.108 is inapplicable. You do not state, nor does it appear upon review of this information, that any of the records related to the disciplinary actions at issue resulted in a criminal investigation or prosecution. We therefore conclude the requested information may not be withheld from disclosure pursuant to section 552.108 of the Government Code. We further note that this office has ruled that complaints and derogatory

information about peace officers are subject to release, and also such information about applicants for those positions. Open Records Decision No. 361 (1983). Also, the names of non-student complainants who file complaints with a university police department, the names of the officers who are the subjects of the complaints, and the final disposition of the complaints must be disclosed. Open Records Decision Nos. 350 (1982), 342 (1982), 329 (1982).

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 106272

Enclosures: Submitted documents

cc: Mr. Reshunn Chambers  
502 S.W. 16th Street  
Grand Prairie, Texas 75051  
(w/o enclosures)

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