



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 11, 1997

Mr. John Steiner  
Division Chief  
City of Austin  
Legal Department  
P.O. Box 1088  
Austin, Texas 78767-1088

OR97-1368

Dear Mr. Steiner:

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# 106326.

The City of Austin (the "city") received a request for a copy of a police officer's memo submitted to the Austin Police Department Traffic Office regarding incident number 96-222018 including any other relevant documentation. The incident involves an accident between the officer responding to an emergency call and a motorist. You assert that the requested information is excepted from required public disclosure based on Government Code sections 552.101 and 552.108. We have reviewed your submitted documents and considered your exceptions.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. In the 1995 legislative session, the legislature amended article 6701d, V.T.C.S., in House Bill 391 to provide that a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report on request to, among others, a person who provides the law enforcement agency with two or more of the following: (1) the date of the accident, (2) the name of any person involved in the accident, or (3) the specific location of the accident. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413. This act, however, applies only to "accident reports" required by article 6701d, V.T.C.S., or by article 6701h, V.T.C.S. Section 550.064 of the Transportation Code, formerly part of article 6701d, provides that the Texas Department of Transportation shall prepare and, upon request, supply accident report forms to suitable agencies or individuals. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 1, 1995 Tex. Sess. Law Serv. 1025, 1694-95 (to be codified as Transp. Code § 550.064). The statute sets out the

information that must be included in those forms. *Id.* Section 601.004 of the Transportation Code, formerly part of article 6701h, similarly provides for accident report forms to be prepared by DPS. *Id.* 1995 Tex. Sess. Law Serv. at 1705-06. The requestor has not given the city the required information needed so the city must withhold the accident report under section 552.101.

The request also seeks a copy of an officer's memo to the Austin Police Department Traffic Office. You claim that such information is protected by section 143.089 of the Local Government Code. 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). You do not inform us whether you have previously provided the requestor access to the officer's personnel files required to be maintained by the civil service department under section 143.089(a) with certain information withheld, but you assert that some of the submitted documents comprise what you consider the police department's internal file. Therefore, we are considering only those files which may be maintained by the police department for its own internal use under section 143.089(g).

Section 143.089(g) 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 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.

In *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. 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 act. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6. You contend the submitted the memorandums fall within the personnel files maintained under section

143.089(g), but we are unable to determine whether any internal investigation resulted in disciplinary action. We note, however, that if the investigation did not result in disciplinary action, information maintained by the police department that relates to such investigations must be withheld from required public disclosure under section 552.101 of the act in conjunction with section 143.089(g) of the Local Government Code.<sup>1</sup> However, if any of the internal affairs investigations did result in disciplinary action, then “any record, memorandum, or document relating to” the disciplinary action must be placed in the personnel files maintained by the civil service commission under section 143.089(a) and must be released by the civil service commission under section 143.089(f) of the Local Government Code unless otherwise excepted by the Open Records Act. Relatedly, it is unclear whether copies of “Impound/Wrecker Selection Report” are attachments to the memorandums. However, we observe that section 552.108 excepts “[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). Thus these attachments to the memorandums fall within the purview of section 552.108 and may not be released.

We note, however, that the city must withhold some of the submitted information under section 773.091 of the Health and Safety Code. Section 773.091 provides:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

This confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” *Id.* § 773.091(g). We do not understand any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code to apply in this instance. Accordingly, the city must withhold the submitted EMS records under section 552.101 of the Government Code, except for any information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of police officers who received emergency medical services.

Next, we note that under chapter 411.082 criminal history record information does not include driving record information. Gov’t Code § 411.082(2)(B). Although you refer this office to the user agreement between the city and Texas Department of Public Safety as the administrator of the Texas Law Enforcement Telecommunications Systems

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<sup>1</sup>We also note that section 143.089(g) requires a police department receiving a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director’s designee.

(TLETS) as serving to make this information confidential, we however, note that governmental bodies may not enter into agreements to keep information confidential except where specifically authorized to do so by statute Open Records Decision No. 444 (1986). Consequently, you must release the TLETS vehicle registration documents.

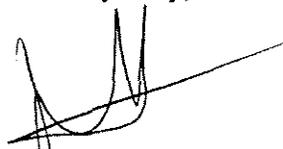
Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996).

We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ’g 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). In the instant open records request, although you do not cite nor do you proffer any specific offense report, you submit documents which appear to be various Computer Aided Dispatch (“CAD”) reports created by dispatchers during the course of radio communications with law enforcement officers in the field.

CAD reports the types of information that are considered to be “front page offense report information,” even if this information is not actually located on the front page of the offense report. See Open Records Decision No. 394 (1983) (radio dispatch logs). Although section 552.108 authorizes the department to withhold the remaining information in the CAD reports, you may choose to release all or part of these particular records that is not otherwise confidential by law. See Gov’t Code § 552.007.

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,



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JIM/glg

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1

