



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 21, 1998

Mr. Patrick W. Christensen  
Assistant City Attorney  
Community & Organization Services  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR98-3212

Dear Mr. Christensen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 120567.

The City of San Antonio Fire Fighters' and Police Officers' Civil Service Commission (the "commission"), which you represent, received a request for "any and all information" concerning Officer Thomas F. Ortiz. In response to the request, you submit to this office for review a representative sample of the information which you assert is responsive.<sup>1</sup> You claim that the requested information is excepted from required public disclosure by sections 552.101, 552.108 and 552.117 of the Government Code. We have considered the exceptions and arguments you have raised and reviewed the submitted information.<sup>2</sup>

You ask whether the officer's home address, telephone number, and social security number are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(2) of the Government Code excepts from public disclosure a peace officer's

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<sup>1</sup>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). This open records letter does not reach, and therefore does not authorize 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.

<sup>2</sup>You have submitted four (4) pages consisting of two pages from the officer's completed "City of San Antonio Application for Police Cadet," and two pages concerning a "Professional Standards Investigation Report." We assume that any other responsive records, substantially different from the submitted information and typically found in an officer's file with the commission, should it exist, will be released to the requestor, unless confidential by law.

home address, home telephone number, social security number, and information indicating whether the peace officer has family members. Therefore, we agree that the information you have marked and seek to protect is excepted from disclosure under section 552.117(2).

We next consider your claimed exception under section 552.108, the "law enforcement," exception. This exception, *in part*, excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication

....

(b) 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* is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication . . . .

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). However, the "law enforcement exception" was not intended by the legislature to shield from public view information in the hands of police units that, absent special law enforcement needs or circumstances, would ordinarily be available to the public if possessed by a different governmental unit. *See* Open Records Decision Nos. 434 at 2 (1986), 287 at 2 (1981) (whether information falls within section 552.108 must be determined on a case-by-case basis). As for the submitted two page document titled "City of San Antonio Application for Police Cadet," we note that besides the information which must be withheld under section 552.117, we did not find any other information which could be considered subject to 552.108. *See generally Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied); Open Records Decision No. 361 (1983) (statutory

predecessor to section 552.108 did not apply to pre-employment application file of peace officer). As for the other two pages from the Professional Standards Investigation Report, we note that the allegation contained in the internal affairs investigation does not appear to be of a criminal nature.<sup>3</sup> Because these internal affairs investigations are generally administrative, as opposed to criminal, in nature, section 552.108 is not intended to protect such investigations. *See Morales v. Ellen*, 840 S.W.2d at 526 (predecessor statute to section 552.108 not applicable were no criminal investigation resulted). Furthermore, you have not demonstrated how the release of the information at issue would interfere with law enforcement for purposes of section 552.108. Consequently, the commission may not withhold the internal affairs investigations pursuant to either section 552.108.

We note that subsequent to your original request for a ruling, you raised section 552.101 of the Government Code.<sup>4</sup> As provided by section 552.303(e), the information that is the subject of this request for information is presumed to be public information and it must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). *See, e.g.*, 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). However, section 552.101 protects information that is confidential by law. Because the presumption of openness is overcome by a showing that information is confidential by law, we must consider your section 552.101 claim.

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. You assert that the commission is prohibited from releasing the information contained in the Professional Standards Investigation Report by section 552.101 in conjunction with section 143.089 of the Local Government Code.

Section 143.089(b) states that "[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 sustain the charge of misconduct." Files of internal affairs investigations that result in disciplinary action are not excepted from disclosure based on section 552.101. However,

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<sup>3</sup>This office has determined that section 552.108 does not protect general personnel information from public disclosure. Open Records Decision No. 562 at 10 (1990) (applying predecessor statute).

<sup>4</sup>Pursuant to section 552.301(b), a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

when the records concern a complaint against a police officer for which no disciplinary action was taken, the records are confidential under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. *See City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.–Austin 1993, writ denied).

The court in *City of San Antonio*, addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a police department's internal file. No such confidentiality provision governs information that is required to be maintained in the civil service personnel files pursuant to section 143.089(a) through (c). Information maintained in the civil service personnel files must generally be released to the public upon request, unless some provision of chapter 552 of the Government Code permits the civil service commission to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 at 6 (1990) (construction of Local Gov't Code § 143.089(f) provision requiring release of information as required by law).

We agree that if any of the responsive information is maintained in the section 143.089(g) internal personnel file, this information is confidential and may not be disclosed. However, we note that if there is other information that would be required to be maintained in the civil service file, such information is not generally confidential under section 143.089. In this instance, you have not submitted sufficient information from which we can make a determination whether disciplinary action was taken or there was insufficient evidence to sustain the charge. Because you only submitted a representative sample of the specific records at issue, there is no basis by which we can conclude all of the responsive records are confidential by law. If the investigation led to disciplinary action the information must be released, however, if the charges were not sustained, then the information must be withheld. To the extent that responsive records are confidential under section 143.089(g) or other law, these may not be disclosed. *See Gov't Code § 552.352* (the distribution of confidential information is a criminal offense). The records otherwise are public and must be released. Gov't Code § 552.303(e).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", is written over a large, stylized circular flourish.

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref.: ID# 120567

Enclosures: Submitted documents

cc: Mr. Baron C. Clark  
7910 Robin Rest Drive  
San Antonio, Texas 78209  
(w/o enclosures)