



June 21, 1999

Mr. Steven J. Duskie  
Police Legal Advisor  
City of Corpus Christi  
P.O. Box 9016  
Corpus Christi, Texas 78469-9016

OR99-1692

Dear Mr. Duskie:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 125077.

The City of Corpus Christi (the "city") received requests for

1) [a]ny and all documents, e-mails, memoranda, reports, audio or video recordings and internal communications regarding any investigations of the city's Weed and Seed program and/or its employees since June 1, 1998 by the Internal Affairs Office of the Corpus Christi Police Department.

In response to the request, you submit to this office for review a copy of the records and representative sample of the audio tapes at issue.<sup>1</sup> You assert that the submitted information is excepted from disclosure under section 552.108 and section 552.101 of the Government Code, in conjunction with section 143.089 of the Local Government Code. We have considered the exceptions and arguments you have raised and reviewed the submitted information.

Initially, we note that the current request appears related to a prior ruling from this office. In Open Records Letter No. 99-0364 (1999), this office addressed a request by the same individual for

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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.

- 1) [a]ny and all memoranda, reports, internal communications, and/or documents associated with allegations of misappropriations, mismanagement, sexual harassment and/or political activity of the city's Weed and Seed Program [and]
- 2) [a]ny written statements from Weed and Seed employees given to the City Manager or his representative since October.

We further note that the outcome in our previous ruling on the related information has been challenged in a lawsuit which is currently pending in Travis County. According to our records, Open Records Letter No. 99-0364 (1997) is currently pending before the court and subject to a lawsuit styled, *City of Corpus Christi v. John Cornyn*, No. 99-02000 (53rd Dist. Ct., Travis County, Texas). It is the policy of this office not to address issues that are being considered in pending litigation. However, we note that the records at issue in this file do not appear to have been submitted in response to the prior request nor subject to the pending litigation; therefore, we will undertake to address the applicable claimed exceptions for the records at issue.

As for the submitted exhibits, you argue that the information, including audio tapes and statements, are excepted from disclosure by section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. 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 represent that the requested information is maintained in the city's police department's internal personnel file as outlined in section 143.089(g) of the Local Government Code. You explain that the City of Corpus Christi has adopted chapter 143 of the Local Government Code and is a civil service city. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the city's police department is required to maintain as part of the police officer's civil service file, and one that the city's police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) reads as follows:

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 [of the civil-service commission] or the

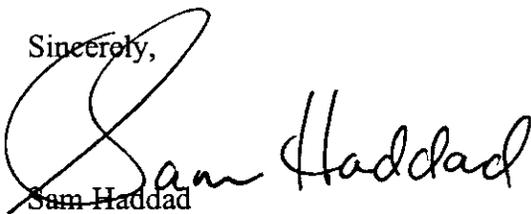
director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] 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); see *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 952 (Tex. App.--Austin, 1993, writ denied).

In cases in which a city's police department takes disciplinary action against an officer, it is required by Local Government Code section 143.089(a)(2) to transfer records relating to the investigation and disciplinary action to the civil service commission. Such records may not be withheld under the Local Government Code's provisions. Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). You explain that the complaint and investigation at issue did not result in any disciplinary action against any police officers. Consequently, we agree that you must withhold the requested information under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

Because we make a determination under section 552.101, we need not address your claim under section 552.108.<sup>2</sup> 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.

Sincerely,



Sam Haddad

Assistant Attorney General  
Open Records Division

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<sup>2</sup>We note that the submitted records also include a number of offense reports, which you contend are excepted from required disclosure pursuant to section 143.089 and section 552.101. In reliance on your representation that the offense reports are within the investigation file subject to section 143.089(g) confidentiality, we have not addressed the applicability of section 552.108 to the submitted offense reports.

Ref.: ID# 125077

Encl. Submitted documents

cc: Mr. James A. Suydam  
Corpus Christi Caller Times  
P.O. Box 9136  
Corpus Christi, Texas 78469  
(w/o enclosures)