



January 31, 2000

Mr. Dan T. Saluri  
Assistant City Attorney  
City of Lubbock  
P. O. Box 2000  
Lubbock, Texas 79457

OR2000-0325

Dear Mr. Saluri:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131110.

The City of Lubbock (the "city") received a request for copies of the police internal affairs investigation regarding the shooting of Joseph De La Rosa by Police Officer Tracy Taylor. You claim that the requested information is excepted from disclosure under section 552.101, 552.103, 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

You state that the current request for information is a renewal of a former request for the same information which resulted in Open Records Letter No. 99-2557 (1999). In Open Records Letter No. 99-2557 at 2, this office concluded that the documents submitted by the city were related to the anticipated litigation and the information at issue could be withheld pursuant to section 552.103(a). Since the issuance of Open Records Letter 99-2557, you inform us that the lawsuit has been filed in the United States District Court for the Northern District of Texas at Lubbock. You have also provided copies of pleadings which reflect that the case is currently in the discovery phase.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." You represent that the information at issue

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<sup>1</sup> You state that some of the documents submitted are a summary of the Internal Affairs investigation. 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.

is the city's Police Department (the "department") Internal Affairs Division ("IAD") investigation report. You also represent that the department's Firearms Review Board records are part of the IAD investigation report which is maintained in Officer Taylor's personnel file pursuant to section 143.089(g) of the Local Government Code. 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).

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 department's internal file. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied) (in construing section 143.089 the court found general legislative policy that allegations of misconduct against police officers and fire fighters not be subject to compelled disclosure unless they have been substantiated and resulted in disciplinary action). You inform this office that the investigation did not result in any disciplinary charges against the officer. Therefore, the requested information is not maintained in a criminal investigation file or in the personnel files maintained by the Director of Civil Service, but rather it is maintained in the section 143.089(g) internal personnel file. Consequently, since the IAD investigation report is maintained only within the internal, section 143.089(g) file, then it is confidential and may not be disclosed.

We note, as we did in Open Records Letter No. 99-2557(1999), that the “Internal Affairs Table of Contents” of the IAD investigation report includes an autopsy report and a Custodial Death Report. Portions of these particular documents are made public by other statutes.<sup>2</sup> See Crim. Proc. Code arts. 49.18(b); 49.25 §11.

Finally, you have submitted case report number 99-009559 and you assert that, except for the front page information, the case report should be withheld from disclosure under section 552.101 in conjunction with section 58.007 of the Family Code and section 552.108. You state that because the case report relates to an investigation of a criminal matter relating to a child, case report number 99-009559 is confidential under section 58.007 as encompassed by section 552.101 of the Government Code. Section 552.101 encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

- (1) kept separate from adult files and records; and
- (2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The case report relates to juvenile conduct that occurred after September 1, 1997. Section 58.007(c) deems the case report confidential, and section 58.007 does not provide for its release to the requestor. Accordingly, the city must withhold the case report from disclosure under section 552.101 of the Government Code.

Because we are able to make a determination under sections 552.101, we need not address your other claimed exceptions. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

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<sup>2</sup> The Public Information Act’s exceptions do not, as a general rule, apply to information made public by other statutes. Open Records Decision No. 525 (1989).

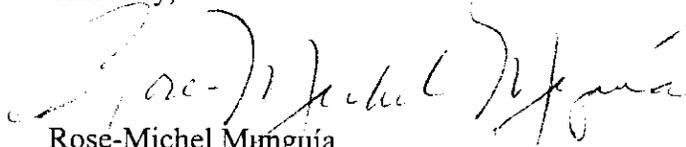
governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Rose-Michel Munguia  
Assistant Attorney General  
Open Records Division

RMM/jc

Ref: ID# 131110

Encl. Submitted documents

cc: Ms. Elizabeth Langton  
Avalanche-Journal  
P.O. Box 491  
Lubbock, Texas 79408  
(w/o enclosures)