



May 3, 2000

Mr. W. B. McAfee  
Legal Advisor  
Irving Police Department  
P. O. Box 152288  
Irving, Texas 75015-2288

OR2000-1719

Dear Mr. McAfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134804.

The City of Irving (the "city") received a request for:

1. A complete log of calls for service from the Valley Trails Apartments, specifically the addresses 8817 Valley Ranch, 8819 Valley Ranch, and 8821 Valley Ranch, for the time period of April 1, 1999 through December 31, 1999;
2. A full and complete copy of incident report #99-27116;
3. The resume, IPD Internal Affairs file, and record of complaints, if any, involving IPD Officer David Crenshaw; and
4. A copy of IPD policies and training manuals on handling citizen complaints of racial harassment.

You claim that requested item number 2 is excepted from disclosure under section 552.108 of the Government Code. You also claim that requested item number 3 is excepted from disclosure under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. You have not submitted information for our review or raised any

exceptions to disclosure with regard to requested item numbers 1 and 4 or Officer Crenshaw's resume. Therefore, we presume that you have released Officer Crenshaw's resume and the information responsive to requested item numbers 1 and 4 to the requestor. Gov't Code §552.301.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes such as section 143.089(g) of the Local Government Code. You represent that the records you have submitted for our review as Exhibit E is the only internal file maintained by the city's police department (the "department") concerning Officer Crenshaw. You state this document is maintained by the department under 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 submitted “[i]nternal affairs files are maintained by the department as part of each officers’ departmental personnel file maintained for department use.” Consequently, since you represent that the submitted records are maintained only within the section 143.089(g) file, we conclude that such records are confidential. Thus, the city must not release the records to the requestor. Gov’t Code §552.101.

Finally, with regard to incident report number 99-027116, you state that you have released to the requestor Exhibit D which contains the basic information about the incident as required by *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). Gov’t Code §552.108(c). However, you argue against disclosure of the remaining information in incident report number 99-027116 pursuant to section 552.108(a)(2).

Section 552.108(a)(2) of the Government Code 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:

...

(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[.]

In this instance, you state that the incident report deals with the investigation of crime that did not result in a conviction or deferred adjudication. Our review of the incident report reveals that the disposition of this case is “Case Suspended.” Based on our understanding that you represent that this case is concluded and did not result in a conviction or deferred adjudication, this office finds that the city may withhold the information at issue pursuant to section 552.108(a)(2).

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

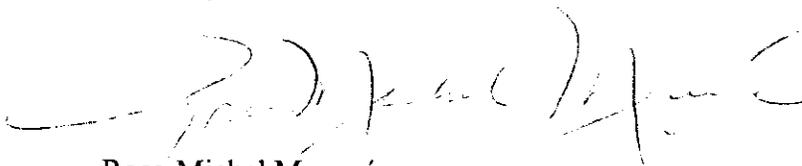
governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the 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 Munguía  
Assistant Attorney General  
Open Records Division

RMM/nc

Ref: ID# 134804

Encl. Submitted documents

cc: Mr. Dusty Rhodes  
Office of Michael M. Daniel  
3301 Elm Street  
Dallas, Texas 75226  
(w/o enclosures)