



June 25, 2001

Mr. Robert J. Gervais  
City Attorney  
City of Texas City  
P.O. Drawer 2608  
Texas City, Texas 77592-2608

OR2001-2692

Dear Mr. Gervais:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148702.

The City of Texas City (the "city") received a request for copies of any investigations and reports of alleged minor-aged strip dancing, access to alcohol, or participation in bikini and/or beauty contests at a specified location within the last three years. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the submitted documents contain information that is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.<sup>1</sup> Section 143.089 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. *See Local Gov't Code § 143.089(a), (g)*. The civil service file must contain certain specified items, including documents relating to any misconduct in those cases where the police department took disciplinary action against the peace officer. *See id.*

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes.

§ 143.089(a)(2). However, documents relating to any alleged misconduct or disciplinary action taken must be removed from the civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See id.* § 143.089(b), (c). Thus, subsections (a)-(c) limit the contents of the civil service file.

Subsection (g) authorizes, but does not require, the city police department to maintain for its use a separate and independent, internal personnel file on a peace officer. 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.

Local Gov't Code § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 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. *See City of San Antonio*, 851 S.W.2d at 949. You state that the internal affairs investigation did not result in any disciplinary action against any police officer. You also state that "to the extent that certain information contained in the file alleges misconduct by police officers and a complaint against these officers, the City asserts these records are confidential by law, based on section 143.089(g) of the Texas Local Government Code." However, we are unable to determine whether the documents you submitted to this office for review are solely part of the file maintained by the city police department under section 143.089(g). If the submitted documents are maintained only within the section 143.089(g) file, the documents are confidential and may not be disclosed. However, if the submitted documents are not solely part of the city police department's section 143.089(g) file, they are not excepted from disclosure under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. Accordingly, we address your other claimed exceptions to the extent that the submitted documents are not solely part of the city's section 143.089(g) files.

You claim that some of the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with section 58.007(c) of the Family Code. Juvenile law enforcement records concerning the delinquent conduct of a juvenile that occurred on or after

September 1, 1997 are confidential under section 58.007(c). Section 58.007 of the Family Code states in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Based on our review of the submitted documents, we cannot conclude that any of the information constitutes law enforcement records concerning the delinquent conduct of a juvenile that occurred on or after September 1, 1997. *See* Fam. Code § 51.03 (defining "delinquent conduct"). Accordingly, the submitted information is not confidential under section 58.007(c) of the Family Code and, thus, cannot be withheld from disclosure pursuant to section 552.101 of the Government Code.

You claim that the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 states in pertinent part:

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

(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 . . . if:

...

(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(a)(2), (b)(2). Generally, a governmental body claiming 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(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not explain, nor does the information show on its face, whether case report numbers 98-014135 and 98-013989 pertain to pending criminal investigations or prosecutions. Further, you do not otherwise explain how release of these case reports would interfere with law enforcement. Therefore, we cannot conclude that case report numbers 98-014135 and 98-013989 are excepted from disclosure pursuant to section 552.108 of the Government Code. Accordingly, you must release these reports to the requestor.

In summary, you must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code to the extent that it is solely part of the city police department's section 143.089(g) file. To the extent that the submitted information is not solely part of the city police department's section 143.089(g) file, you must release it to the requestor.

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

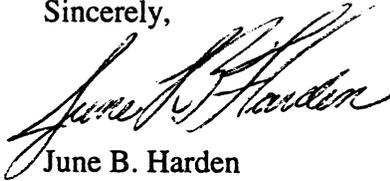
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/RJB/seg

Ref: ID# 148702

Encl. Submitted documents

cc: Ms. Morghan Martell  
The Daily News  
3000 Hwy 1754  
La Marque, Texas 77568  
(w/o enclosures)