



August 20, 2001

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2001-3644

Dear Mr. Weir:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150946.

The City of San Antonio Police Department (the "department") received a request for a specified department internal affairs file. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Before addressing the claimed exception, we note that the information at issue is subject to section 552.022 of the Government Code. This provision states in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter *unless they are expressly confidential under other law*:

...

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov't Code § 552.022(a)(1) (emphasis added). As a completed report made by and for the department, the information is subject to section 552.022(a)(1), and is thus subject to required public disclosure except as provided under section 552.108, or under "other law." You do not assert section 552.108; however, you do assert section 552.101 in conjunction with section 143.089 of the Local Government Code, which constitutes "other law" for purposes of section 552.022(a). We next address your claimed exception.

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. We understand that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files for city police officers and fire fighters: one that the civil service director or designee is required to maintain as part of the fire fighter's civil service file, and one that the city's police or fire department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a police officer under chapter 143, it is required by section 143.089(a)(2) to place "any letter, memorandum, or document relating to" the investigation and disciplinary action in the police officer's civil service file maintained under section 143.089(a). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See id.* §§ 143.051-.055. Such records are subject to the release provisions of chapter 552 of the Government Code. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to a police officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b).

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

Information in a personnel file maintained by a fire or police department pursuant to subsection (g) is excepted from disclosure under section 552.101 of the Government Code if the information is reasonably related to the fire fighter's or police officer's employment relationship with the fire or police department. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3rd 556 (Tex. App. -- San Antonio 2000, no

pet. h.); Open Records Decision 562 at 6 (1990) (information reasonably relating to officer's employment relationship with department and maintained in the department's internal file pursuant to section 143.098(g) is confidential). Open Records Decision 562 at 6 (1990). We understand you to represent that the information at issue is maintained in the department's internal file pursuant to section 143.089(g). We note that the information at issue concerns an investigation pertaining to a complaint filed by a citizen involving allegations of police officer misconduct. The department notified the accused police officer that the department deactivated the investigation. After inspecting the submitted information, we conclude that it is reasonably related to the police officer's employment relationship with the city and must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

In the written request for information, the requestor, an attorney, raises a special right of access regarding the information at issue under section 552.023 of the Government Code on behalf of the police officer against whom the allegations were made. Section 552.023 in relevant part states:

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

You inform us that the requestor, an attorney who, in other matters, has represented the police officer to whom the information at issue relates, has provided no written authorization from the police officer as to the instant request. In his request letter, the requestor refers to a discussion between himself and the officer, but fails to mention an attorney-client relationship regarding this request, or whether the officer has authorized the requestor to obtain the requested information. *See* Gov't Code § 552.229(a) (consent for release of information excepted from disclosure to general public but available to specific person under section 552.023 must be in writing and signed by specific person or person's authorized representative). In addition, we note that section 552.023(b) provides that a governmental body "may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests." In this instance, we believe the requested information is confidential under section 143.089(g) of the Local Government Code for reasons other than the protection of the privacy interests of the requestor or the accused police officer about whom the information concerns. Moreover, this office has interpreted section 143.089(f) to grant a right of access only to the information in the personnel file maintained in section 143.089(a). *See* Open Records

Decision No. 650 at 3 (1996) (the confidentiality provision of section 143.089(g) contains no exceptions); *see also City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 952 (Tex. App.—Austin 1993, writ denied) (subsection (g) of section 143.089 expressly forbids release of files maintained thereunder to anyone under any circumstances).

In summary, we conclude that the information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with subsection 143.089(g) of the Local Government Code.

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).

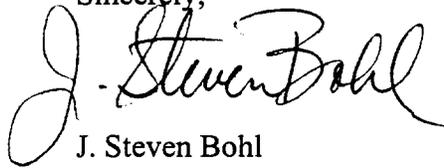
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink that reads "J. Steven Bohl". The signature is written in a cursive style with a large, looping initial "J".

J. Steven Bohl  
Assistant Attorney General  
Open Records Division

JSB/sdk

Ref: ID# 150946

Enc: Submitted documents

c: Mr. Ben M. Sifuentes, Jr.  
417 San Pero  
San Antonio, Texas 78212  
(w/o enclosures)