



September 6, 2001

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

OR2001-3968

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# 151682.

The San Antonio Police Department (the "department") received a request for records relating to complaints filed against Officer Barbara Williams as well as her age, law enforcement background, and previous employment. You state that the officer's law enforcement background and previous employment information was contained in the officer's employment application which has been destroyed in accordance with the department's records retention schedule.¹ You claim that information in the departmental file is excepted under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. We have considered your arguments and reviewed the submitted case report and the submitted representative sample of information.²

¹The Public Information Act (the "Act") only applies to information in existence at the time of the request. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to open records requests. Open Records Decisions Nos. 452 (1986), 342 (1982). Furthermore, the Act does not ordinarily require a governmental body to obtain new information to comply with a request. Open Records Decision No. 561 (1990). However, a governmental body must make a good faith effort to relate a request for information to information which it holds. *Id.*

²In reaching our conclusion here, 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.

In your letter of July 2, 2001, you ask to withhold complaints and state that you are writing in regard to a request for a decision made by way of a letter dated June 25, 2001. This office received a letter dated June 25, 2001 from the department asking to withhold documents responsive to a request for information concerning Officer Andrew Ling under section 552.101 in conjunction with section 143.089 of the Local Government Code. With your June 25 letter, you attached a copy of a request for information relating to Officer Ling from the same requestor that you state requested information about Officer Williams. You did not, however, submit a request for information relating to Officer Williams or ask to withhold information relating to Officer Williams in the June 25, 2001 letter. Additionally, in your letter of August 1, 2001, you ask to withhold information relating to the officer's age, law enforcement background, and previous employment.

Section 552.301(b) requires a governmental body to request a decision to withhold requested information and state the exceptions that apply not later than ten business days after the date of receiving the written request. Pursuant to section 552.301(e)(1), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You did not submit a copy of the request for Officer William's information, provide sufficient evidence of the date the department received the request, or state the exceptions that applied for Officer Williams' information as required by section 552.301. Thus, you failed to request a decision in accordance with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You assert that the requested information in Officer Williams' departmental file is excepted under section 552.101 in conjunction with section 143.089 of the Local Government Code. Section 552.101 of the Government Code provides a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Thus, we will address the applicability of section 552.101 to the requested information.

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 statute. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the civil service director or designee 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. *See* Local Gov't Code § 143.089(a), (g). Section 143.089 of the Local Government Code provides in pertinent part:

(a) The director [of the police officers' civil service] or the director's designee shall maintain a personnel file on each . . . police officer. The personnel file must contain *any* letter, memorandum, or document relating to:

....

(1) a commendation, congratulation, or honor bestowed on the . . . police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the . . . police officer if the letter, memorandum, or document is from the employing department and *if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter.*

....

(g) A . . . police department may maintain a personnel file on a . . . 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 . . . 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 . . . police officer's personnel file.

Local Gov't Code § 143.089(a)(2), (g) (emphasis added). An officer's civil service file must contain any letter, memorandum, or document relating to misconduct that resulted in disciplinary action as contemplated by chapter 143. You state that none of the complaints resulted in disciplinary action, but that a written reprimand was issued. Subchapter D of chapter 143 of the Local Government outlines the disciplinary actions contemplated by chapter 143 and does not include a written reprimand. Further, the Attorney General has determined that a written reprimand is not a disciplinary action under chapter 143 and, therefore, the reprimand must be placed in the confidential department file. *See* Attorney General Opinion JC-0257 (2000). Because the written reprimand is not a type of disciplinary action contemplated by chapter 143, the written reprimand must be placed in the departmental file and not in the civil service file.

You indicate that the remaining requested information is kept in the departmental file. Information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet.); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied). Therefore, we conclude that the written reprimand and the remainder of the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code and must not be released 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

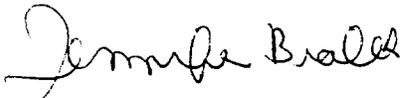
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The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



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 151682

Enc: Submitted documents

c: Mr. Albert L. Rodriguez
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(w/o enclosures)