



September 12, 2001

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053

OR2001-4064

Dear Mr. Alcorn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151889.

The City of Grand Prairie (the "city") received a written request for nine categories of information in connection with a complaint of theft against two named city police officers. You state that most of the requested information either does not exist or has been provided to the requestor. You contend, however, that the named police officers' employment applications contained in the officer's civil service files are excepted from public disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. You have submitted to this office one of the officers' employment application as representative of the requested information.¹

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 143.089 requires the establishment of a civil service personnel

¹In 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 No. 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.

file for each police officer and authorizes the establishment of a confidential personnel file maintained by police departments:

(a) The director [of the police officers' civil service] or the director's designee shall maintain a personnel file on each . . . police officer. . . .

. . . .

(f) The director or the director's designee may not release any information contained in a . . . police officer's personnel file without first obtaining the person's written permission, *unless the release of the information is required by law.*

(g) 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. [Emphasis added.]

The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in a police 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 police department's internal file. On the other hand, no such confidentiality provision governs information that is maintained in the civil service personnel files pursuant to section 143.089. Information maintained in the civil service personnel files must generally be released to the public upon request, unless some provision of the Public Information Act permits the civil service commission to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 at 6 (1990) (officer's written consent to release information only required where release is not otherwise required by under Gov't Code chapter 552).

You state that the requested employment applications are maintained by the city's civil service. Accordingly, unless the information contained in the applications is excepted from disclosure under the Public Information Act, the information must be released to the requestor. You contend, and we agree, that the employment application you submitted to this office contains confidential information.² The employment application contains information that the city must withhold pursuant to section 552.117(2) of the Government Code. Under

²We note, however, that although you specifically contend that "information of past employment" contained in the employment applications is excepted from public disclosure, you have raised no exception to disclosure with regard to this information. See Gov't Code § 552.301(e)(1)(A).

section 552.117(2), the city must withhold "information that relates to the home address, home telephone number, or social security number, or that reveals whether" the police officer "has family members." We have marked the information in the employment application that is excepted from public disclosure under section 552.117(2). Accordingly, the city must withhold this information.

The employment application also contains the police officer's driver's license number. Section 552.130(a)(1) of the Government Code requires the city to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the city must withhold all Texas driver's license numbers pursuant to section 552.130(a)(1) of the Government Code.

In summary, the city must withhold information revealing the home address, home telephone number, social security number, and information that reveals whether the police officers have family members. The city must also withhold the officers' driver's license numbers. The remaining information contained in the employment applications must 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/RWP/seg

Ref: ID# 151889

Enc. Submitted documents

c: Mr. John M. Cook
5630 Yale
Dallas, Texas 75206
(w/o enclosures)