



September 25, 2001

Mr. Samith C. Hill
Chief of Police
Forest Hill Police Department
3336 Horton Road
Forest Hills, Texas 76119

OR2001-4292

Dear Mr. Hill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152356.

The Forest Hill Police Department (the “department”) received a request for:

1. A copy of [the requestor’s] ‘original,’ *unaltered letter of resignation*;
2. A copy of *any* documents sent to the Civil Service Commission by the Chief of Police pertaining to [the requestor’s] request for reappointment; [and]
3. *Any document* which reflects the reappointment by the Police Chief of any person allowed to rejoin the department following resignation.

(Emphasis in original.) You state that you have previously provided the requestor with an altered version of the document responsive to request item 1, and that an unaltered version of the document no longer exists. You also state that you do not have the “information in its totality” that is responsive to request item 3. However, you have provided a representative sample of documents responsive to request item 3. You claim that request items 2 and 3 are excepted from disclosure under sections 552.101 and 552.102 of the

Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the written request for information. You did not, however, submit to this office a copy of the written request for information. 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 information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code, which are compelling reasons for overcoming the presumption of openness.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. We understand that Forest Hill is a civil service city under chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the civil service commission is required to maintain as part of the police officer's civil service file, and one that a 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

¹ 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.

service commission. *See City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 952 (Tex. App.--Austin, 1993, writ denied).

The court in *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.--San Antonio 2000, no pet.), addressed the availability of information that is contained in a department's internal file maintained 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 that are reasonably related to the officer's employment relationship with the department. You represent that request items 2 and 3 are maintained in the department's internal file pursuant to section 143.089(g). The department has referred the requestor to the director of the civil service commission as required by section 143.089(g). We therefore conclude that request items 2 and 3 are confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101. Because section 552.101 is dispositive, we do not address your additional arguments.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/seg

Ref: ID# 152356

Enc. Submitted documents

c: Mr. Greg B. Gauntt
6905 Sunflower Circle South
Fort Worth, Texas 76120
(w/o enclosures)