



September 28, 2001

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi - Legal Department
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2001-4363

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152578.

The City of Corpus Christi (the "city") received a request for all complaints made about a specific police officer, including complaints made by juveniles or their representatives and complaints referred to the city police department's internal affairs division. You indicate that you have released some of the requested information. However, you also state that you are withholding some of the requested information based on an earlier request for a decision from this office. Furthermore, you claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

First, you contend that some of the requested information is the subject of two earlier requests submitted by the same requestor for which you sought an attorney general decision. This office issued a ruling pursuant to your request in Open Records Letter Ruling No. 2001-3947 (2001). In that ruling, a copy of which we have enclosed, we found that portions of the requested information were excepted from disclosure under sections 552.103, 552.108(a)(2), and 552.136. However, we also found that some of the requested information was required to be released. To the extent the information responsive to the instant request is identical to the information we ruled to be excepted from disclosure in Open Records Letter Ruling No. 2001-3947 (2001) and the facts and circumstances surrounding the prior letter ruling

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records at issue 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.

have not changed since the issuance of that ruling, we find you may rely on that ruling to withhold the requested information. *See* Open Records Decision No. 673 (2001). However, to the extent the requested information is identical to information we previously held must be released, you must release the information. *See* Gov't Code § 552.301(f).

Next, we consider your argument under section 552.101 of the Government Code. 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, such as section 143.089(g) of the Local Government Code. Section 143.089 of the Local Government Code provides in pertinent part:

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

....

(2) any misconduct by the fire fighter or 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 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.

Thus, section 143.089 of the Local Government Code provides for the creation of two personnel files for police officers and fire fighters: one that must be maintained by the city's civil service director or his designee and another that may be maintained by the city's fire and police departments. Information contained in personnel files maintained by the civil service director in accordance with chapter 143, including all records from the employing police department relating to misconduct by police officers that resulted in disciplinary action, must be released to the public unless the information comes within one of the Public Information Act's exceptions to required public disclosure. However, information contained in a personnel file held by the police department is confidential pursuant to section 143.089(g) and may not be disclosed under the Act.

You indicate that the submitted information consists of information relating to misconduct that did not result in disciplinary action for the purpose of section 143.089. Because the police department has taken no disciplinary action against the police officer involved, you indicate that submitted information has been placed in the police department's personnel file on the police officer. Consequently, the submitted information must be withheld in its entirety under section 552.101 in conjunction with section 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).

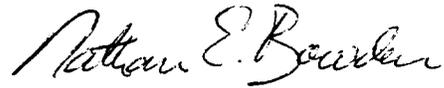
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 152578

Enc: Submitted documents
OR2001-3947

c: Mr. Micheal C. F. White
2554 Lincoln Boulevard, #209
Marina Del Rey, California 90291
(w/o submitted documents)