



November 6, 2001

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

OR2001-5133

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# 154441.

The Grand Prairie Police Department (the "department") received a request for various personnel information related to two department police officers. You state that the department has released certain officer commendations to the requestor, but claim that the remainder of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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. You inform us that Grand Prairie has adopted the civil service system provided for under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the police department is required to maintain,

¹We 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.

and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the 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 release under chapter 552 of the Government Code. *See Id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an 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). 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).

You state that

some information is subject to disclosure by the terms of the statutes, such as the date of hire of the officer, his salary, his rank, and any commendations and disciplinary action. Most of the rest of the information requested has been ruled not to be public information, and may be maintained in the departmental file for departmental use. These items include the application of the officer, information on references generated by the police department in the hiring or application process, any unsustained complaints, and the home address and telephone number of the officer.

You seek to withhold employment applications, including information relating to past employment, qualifications and educational background, and "other information relating to" the officers. You state that "it is the city's position that such information is maintained by the Chief or Department for law enforcement purposes, and that the information is used in making hiring decisions relative to the officers, and is not public information." You also seek to withhold training records, and reprimands and complaints that did not result in disciplinary action. You argue that the training records are maintained for departmental use and are not available to the public, and that the reprimands and complaints that did not result in disciplinary action against the officer would be exempt as law enforcement records involving privacy concerns of the officer. Finally, you inform us that the responsive information includes a complaint against one of the officers that was unfounded, and that a complaint against the other officer was sustained and would result in suspension, but that no decision has been made and that the matter is pending.

Upon review of your arguments, we assume that you are asserting that the above-described information for each officer is kept in an internal department file pursuant to section 143.089(g). As we find that none of the submitted information is required to be placed in a civil service file under section 143.089(a), we conclude that the submitted information is confidential pursuant to section 143.089(g) of the Local Government Code, and must therefore be withheld from the requestor under section 552.101 of the Government Code.²

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).

²We note, however, that among the submitted information is a three-page document dated August 28, 2001. As this document did not exist on the date the department received the request for information, the department need not release this document. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Therefore, this ruling does not reach the question of whether this document is exempted from disclosure.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 154441

Enc. Submitted documents

c: Mr. Clifton Stanley
DFW Legal Services
2616 Lago Vista
Irving, Texas 75062
(w/o enclosures)