



June 24, 2002

Ms. Traci S. Berven
Assistant City Attorney
City of Killeen
101 North College
Killeen, Texas 76541

OR2002-3399

Dear Ms. Berven:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165541.

The City of Killeen (the "city") received a request for the inquiry into an incident in which the requestor's client allegedly was injured during an arrest. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 the city is a civil service city 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, 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, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

You state that the city maintains the information at issue in the police department's internal file pursuant to section 143.089(g) because the complaint is one in which the department determined that there was insufficient evidence to sustain the charges of misconduct. We therefore conclude that most of this information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101.

However, while we generally agree that the city's records of internal affairs investigations that do not result in disciplinary action are confidential under section 143.089(g), a portion of the information at issue is contained in police department offense report and investigation records separate and apart from those of the internal affairs investigation. We assume the city maintains this information outside of the department's personnel file. The city may not engraft section 143.089's confidentiality to other records that exist independently of the internal affairs investigation. Thus, the city must not withhold Case No. 02-888888 under section 143.089(g).

We note that Case No. 02-888888 contains certain information that might otherwise be protected under section 552.101 in conjunction with common-law or constitutional privacy. However, this information would only be excepted from disclosure to protect the privacy interests of the requestor's client, and section 552.023(a) of the Government Code grants a special right of access to a person or a person's authorized representative to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. See Open Records Decision No. 481 (1987) (determining that common law privacy does not provide basis for withholding information from its subject). Because the requestor has a special right of access to the information, it may not be withheld under section 552.101.¹

As you make no other arguments against disclosure of the information in Case No. 02-888888, the offense report and investigation records pertaining to Case No. 02-888888 must be released to the requestor.

¹We emphasize, however, that if the city receives another request for information that relates to the requestor's client, and the person that requests the information does not have a special right of access to it under section 552.023 of the Government Code, the city should resubmit the information to this office and request another ruling.

In summary, the offense report and investigation records pertaining to Case No. 02-888888 must be released to the requestor. The remainder of the submitted information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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/jh

Ref: ID# 165541

Enc. Submitted documents

c: Mr. L. J. Minor
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(w/o enclosures)