



June 24, 2002

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

OR2002-3429

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# 164734.

The City of Grand Prairie Police Department (the "department") received a request for all internal affairs files on a named police officer. You indicate that you have released some information responsive to the request. However, you claim that the remainder of the requested information is excepted from disclosure under section 143.089 of the Local Government Code. We have considered your argument and reviewed the submitted information.

Section 552.101 of the Government Code 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 named police officer has been the subject of only one internal affairs investigation and the investigation resulted in a one-day suspension of the officer. Although the investigation resulted in "disciplinary action" for the purpose of section 143.089(a), you contend that only the letter of suspension, and none of the details of the investigation, is required to be placed in the civil service file and opened to the public. We understand you to assert that the department maintains all of the information from the investigation, other than the suspension letter, in its personnel file. We agree that, to the extent the submitted information is maintained in the department's personnel file, it is confidential under section 143.089(g) of the Local Government Code. However, we disagree with your assertion that the details of the investigation need not also be placed in the civil service personnel file. Section 143.089(a)(2) does not restrict the scope of information required to be placed in a civil service file solely to information that actually imposes discipline on an officer. Rather, section 143.089(a)(2) applies to any information received by the civil service director or the director's designee from the police department. Furthermore, this office has read section 143.089 to require that any information held by the employing police department and relating to employee misconduct must be placed in the civil service file if the misconduct resulted in disciplinary action. Thus, while the submitted information may

be maintained in the department's personnel files, it must also be placed in the civil service personnel files. Furthermore, as information in the civil service files, the submitted information is not confidential under section 143.089(g) of the Local Government Code and must be released.

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).

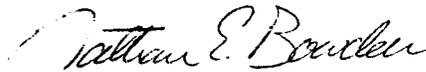
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. Dep't of Pub. 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 164734

Enc: Submitted documents

c: Mr. J. Michael Jaynes  
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(w/o enclosures)