



November 8, 2002

Mr. John Steiner
Assistant City Attorney
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2002-6381

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171212.

The City of Austin (the "city") received a request for "[a] report compiled by the Austin Police Monitor's Office, presented to Chief Stan Knee on Aug. 16, relating to the death of Sophia King on June 11, 2002." You state that the city does not have the requested report but that you interpret the request to seek "whatever was presented by the Police Monitor to the Chief on that date." You have submitted the document that was presented on that date, which you claim is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the attorney for the requestor. *See* Gov't Code §552.304 (providing for submission of public comments).

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. 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 civil service director 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).

A qualified civil service municipality may elect under subchapter I of the Local Government to enter into an agreement with a police association regarding “wages, salaries, rates of pay, hours of work, other terms and conditions of employment, [and] other personnel issues.”¹ Local Gov't Code § 143.303. When a qualified municipality enters into such an agreement, the agreement “supercedes a previous statute concerning wages, salaries, rates of pay, hours of work, or *other terms and conditions of employment* to the extent of any conflict with the statute” and “preempts any contrary statute, executive order, local ordinance, or rule adopted by the state or a political subdivision or agent of the state including a personnel board, a civil service commission, or a home-rule municipality.” Local Gov't Code § 143.307(a), (b) (emphasis added). However, an agreement “may not diminish or qualify any right, benefit, or privilege of any employee under this chapter or other law” unless the change is approved by a majority of the police association. *See id.* § 143.307(c).

You inform us that in March 2001 the city and the Austin Police Association entered into an agreement pursuant to subchapter I and have provided us with a copy. *See Agreement Between The City of Austin and The Austin Police Association March 25, 2001 -- September 26, 2003* (hereinafter “Agreement”). Section 12 of Article 16 of the Agreement establishes a civilian oversight process. Agreement, Art. 16, § 12, p 33. Exhibit B of the Agreement outlines the process, in which the Police Monitor (the “Monitor”) acts as an observer and advisor during investigations by the department's Internal Affairs Division (the “division”) and is authorized to receive complaints from the public and to refer such complaints to the division. *Id.* Ex. B, § I(B)(3)(a)-(d), pp 2-3. The Agreement gives the Monitor access to

¹Subchapter I of the Local Government Code applies in part to municipalities with a population of 460,000 that operates under a city manager form of government. *See* Local Gov't Code § 143.301. The submitted Agreement indicates that the city is such a qualified municipality.

department disciplinary information, including otherwise confidential departmental files. *Id.* § I(B)(3)(e), p 3. The Monitor is also authorized under the Agreement to attend witness interviews and request that the division contact a particular witness or collect certain evidence. *Id.* § I(B)(3)(f)-(g), pp 3-4. However, the Agreement forbids the Monitor from having any direct, independent contact with any witness and from asking questions or otherwise interfering with the department's disciplinary process. *Id.* § I(B)(3)(g)-(h), p 3. The Agreement provides that the division "is solely responsible for investigating a complaint except when an independent investigation is authorized pursuant to this Oversight process." *Id.* § I(B)(3)(g), p 4. Furthermore, the Agreement mandates that the Monitor and her staff are subject to the Agreement's confidentiality requirements. *Id.* § I(B)(3), p 2. These confidentiality requirements provide as follows:

Disciplinary files maintained by the Austin Police Department are confidential. The Police Monitor, his staff, and the [Citizen] Review Panel members, may not discuss or release the contents of those files with any person other than members of the Review Panel, the Chief of Police or his designee, the Internal Affairs Division, the City Manager or his Designee, the City of Austin Law Department, and [within certain limitations] the accused employee.

Id. § I(G), p 15. The Agreement also provides that "the City shall maintain all Internal Affairs complaints and investigations in personnel files maintained by the department for the department's use pursuant to the Texas Local Government Code, Section 143.089(g), except as herein amended." Agreement, Art. 16, § 12, p 33.

You state that the requested information relates to an investigation into possible misconduct by city police officers and that no disciplinary action has been taken against any of the officers named in the information. You indicate that the city therefore maintains the requested information in the police department's internal file. We note that the Agreement creating the Police Monitor neither authorizes nor requires the release of this information. Therefore, based on your representations and our review of the submitted documentation, we agree that the requested information pertains to an internal affairs division investigation that has not resulted in disciplinary action against any officer. As such, this information is confidential under section 143.089(g) of the Local Government Code and must be withheld pursuant to section 552.101 of the Government Code. As our ruling on this issue is dispositive, we need not address your other claimed exceptions.

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).

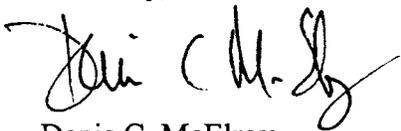
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

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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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 171212

Enc. Submitted documents

c: Mr. Tony Plohetski
Austin-American Statesman
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(w/o enclosures)