



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 10, 2002

Ms. Jan Clark
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2002-7016

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173349.

The City of Houston (the "city") received a request for a particular letter to the civil service commission in relation to two named police officers, and documentation of the arbitration award in two related cases. You advise that some of the requested information has been released. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and have 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 under chapter 143, 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. filed); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

You explain that the highlighted information you have redacted pertains to complaints that were found to be unsustainable by an arbitrator. Such information may not be placed in an officer's civil service personnel file that is maintained under section 143.089(a). Local Gov't Code § 143.089(b). Thus, based on your statements and our review of the submitted information, we agree that the highlighted information is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code to the extent the information is maintained solely in the department's personnel files.¹

Furthermore, the submitted documents contain information that may be confidential under section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, if the official whose personal information we have marked elected under section 552.024, prior to the city's receipt of the request, to keep this information confidential, you must withhold it under section 552.117(1) of the Government Code. You may not withhold this information under section 552.117 if the official has not made a timely election under section 552.024.

However, you state your belief that there is no basis for the information which may be confidential under section 552.117 to be withheld because it has already been disseminated by the media. While a governmental body may waive the right to claim permissive exceptions to disclosure under the Public Information Act by selectively disclosing information, it is prohibited from disclosing information made confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 400 (1983). Section 552.117(1) makes certain information of a government employee or official confidential if a timely election

¹ Based on this finding, we need not reach your argument that the submitted information is also confidential under sections 143.1214(b) and 143.1214(c) of the Local Government Code.

under section 552.024 was made. Therefore, if section 552.117 applies to this information, it must be withheld, regardless of its previous dissemination.

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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 173349

Enc. Submitted documents

c: Mr. Tim Fleck
The Houston Press
1621 Milam, Suite 100
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(w/o enclosures)