



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 21, 2003

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2003-1162

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176814.

The City of League City (the "city"), which you represent, received a request for copies of "complaints against League City Police Officers, the resulting internal investigation, the final determination of the complaint against the officer and the letter advising of disciplinary action, if any." You state that you will withhold some of the responsive information in accordance with Open Records Decision No. 670 (2001). *See* Open Records Decision No. 673 (2001) (requirements of previous determination). You indicate that you will release other responsive information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.¹

You state that the submitted information contains a peace officer's accident report form. Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a

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.

person who provides two or more pieces of the required information specified by the statute. *Id.* In this case, as the requestor has not supplied two or more pieces of the required information, you must withhold the submitted peace officer's accident report form in Exhibit 3 under section 550.065(b) of the Transportation Code.

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 (the "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 city maintains Exhibits 1, 2, and 4 in the police department's internal file pursuant to section 143.089(g). You state that Exhibit 1 is representative of complaint files that resulted in disciplinary action other than removal, suspension, demotion, and uncompensated duty, and that Exhibit 2 is representative of complaints that did not result in any disciplinary action. You indicate that the city wishes to withhold information in Exhibit 4, an "Internal Investigations/Policy Log," to the extent that this information relates to complaints that did not result in removal, suspension, demotion, or uncompensated duty. Having reviewed the submitted information, we agree that Exhibits 1 and 2 are confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101. However, Exhibit 4 does not appear to be contained in any personnel file on a police officer as contemplated by section 143.089(g); rather, you indicate that this exhibit is an indexing tool designed for the city's use in accessing information in personnel files. Thus, the city may not withhold any information in Exhibit 4 under section 143.089(g) of the Local Government Code.

You concede that Exhibit 3 relates to "disciplinary action" for the purpose of section 143.089(a). However, you contend that only information from the employing department and from individuals in a supervisory capacity is required to be placed in the civil service file and opened to the public. We understand you to assert that the police department maintains all of the information from the investigations, other than information from the employing department and from individuals in a supervisory capacity, in its internal file. We agree that, to the extent the information in Exhibit 3 is maintained in the police 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 information in Exhibit 3 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 from the employing department and from individuals in a supervisory capacity. 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 Exhibit 3 may be maintained in the police 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 unless it is otherwise excepted from disclosure.

You indicate that some of the information in Exhibit 3 is excepted from disclosure under section 552.119. Section 552.119 excepts from public disclosure a photograph of a peace officer, that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. However, the submitted information contains no images of peace officers. Accordingly, we find that you may not withhold any of the submitted information based on this exception to disclosure.

Finally, you assert that Exhibit 3 contains motor vehicle information subject to section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas license plate numbers that we have marked under section 552.130.

In summary, you must withhold from disclosure the peace officer's accident report form in Exhibit 3 under section 550.065(b) of the Transportation Code. You must withhold the information in Exhibits 1 and 2 under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. You must withhold Texas license plate numbers we have marked under section 552.130. The remaining submitted information must be released to the requestor.

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 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 176814

Enc: Submitted documents

c: Mr. C.W. deBoisblanc, Jr.
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League City, Texas 77573
(w/o enclosures)