



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

April 1, 2003

Ms. Tamara Pitts  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2003-2207

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178634.

The Fort Worth Police Department (the "department") received a request for copies of "videotapes, audiotapes, or transcripts" pertaining to a specified department officer's interviews with the department's Internal Affairs division. You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample document, videotape, and audiotape.<sup>1</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with section 143.089 of the Local Government Code.<sup>2</sup> Section 143.089 contemplates two different types of personnel files, one that a city is required to maintain as part of the department officer's civil service file, and one that the department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g).

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<sup>1</sup> We 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.

<sup>2</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

The civil service file must contain certain specified items, including documents relating to any misconduct in those cases where the department took disciplinary action against the officer. *See id.* § 143.089(a)(2). However, documents relating to any alleged misconduct or disciplinary action taken must be removed from the civil service file if the department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See id.* § 143.089(b), (c). Information that reasonably relates to an officer's employment relationship with the department and that is maintained in a department's internal file pursuant to section 143.089(g) is confidential and must not be released. *See 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). Thus, subsections (a)-(c) limit the contents of the civil service file.

Subsection (g) authorizes, but does not require, the department to maintain for its use a separate and independent internal personnel file on an officer. Section 143.089(g) provides:

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.

Local Gov't Code § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the department for its use and addressed the applicability of section 143.089(g) to that file. In that case, the records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. *See id.* The court determined that section 143.089(g) made these records confidential. *See id.* at 949. You state that the submitted information is contained in the specified officer's personnel file maintained by the officer's employing department and that the file is maintained according to the statutory requirements of section 143.089(g). We, therefore, agree that the submitted information is confidential pursuant to section 143.089(g) of the Local Government Code and, thus, must be withheld from disclosure pursuant to section 552.101 of the Government Code.

In some circumstances, a requestor may have a special right of access to information that is otherwise confidential. Section 552.023 in relevant part states:

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a

governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

Gov't Code § 552.023. We note, however, that section 552.023(b) provides that a governmental body "may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests." *Id.* In this instance, the information at issue is confidential under section 143.089(g) of the Local Government Code for reasons other than the protection of the requestor's client's privacy interests. In addition, this office has interpreted section 143.089 to grant a right of access only to the information in the personnel file maintained in section 143.089(a). *See* Open Records Decision No. 650 at 3 (1996) (confidentiality provision of section 143.089(g) contains no exceptions). Therefore, the requestor does not have a special right of access to any portion of the submitted information.

You also request that this office issue a previous determination allowing the department to withhold records regarding information that did not result in disciplinary action according to sections 143.051 through 143.055 of the Local Government Code in response to future requests for such information without the necessity of seeking a ruling from this office with regard to such information. We decline to issue such a previous determination at this time.

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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 178634

Enc. Submitted document, videotape, and audiotape

c: Mr. John Hunter Smith  
CLEAT Legal Services  
904 Collier, Suite 100  
Fort Worth, Texas 76102  
(w/o enclosures)