



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 8, 2003

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2003-2364

Dear Ms. Sims:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179032.

The City of Lubbock (the "city") received multiple requests for information relating to a particular shooting incident and for all documents in the personnel files of two police officers. You have informed this office that a portion of the requested information has been released. You claim that other requested information is excepted from disclosure under sections 552.101 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 one of the requestors. *See Gov't Code § 552.304* (providing for submission of public comments).

Section 552.101 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") exceptions to required public disclosure. However, information that reasonably relates to an officer's employment relationship with the police department and that is 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. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet.); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted information is being used to investigate the officers' role in the shooting incident. You contend that because the investigation has not concluded and no disciplinary action has been taken against either officer, the submitted information is made confidential by section 143.089(g). We note, however, that the requestors are not only seeking information from the police department's internal personnel files. Instead, they request general information regarding the shooting incident. Furthermore, while we generally agree that the police department's internal affairs investigations that do not result in disciplinary action are confidential under section 143.089(g), we note that most of the submitted records are also maintained separate and apart from the internal affairs investigation. The confidentiality afforded by section 143.089 may not be engrafted on other records that exist independently of an internal affairs investigation. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d at 564-65 (providing that only information that reasonably relates to fire fighter's or police officer's employment relationship with department is confidential under section 143.089(g)). Thus, to the extent the submitted information pertains solely to internal affairs investigations that have not resulted in

discipline under chapter 143 and such information is maintained solely in the police department's internal personnel files concerning the involved police officers, the information is confidential under section 143.089(g) and must be withheld under section 552.101. However, to the extent the submitted information is also maintained outside of these officers' department personnel files for other law-enforcement related purposes, it is not confidential under section 143.089(g) and may not be withheld on that basis.

We now address your arguments regarding section 552.108 for information maintained outside of the police department's internal personnel files. This section provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). Generally speaking, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information that pertains to pending criminal investigations or prosecutions. In contrast, subsection 552.108(a)(2) protects information that relates to concluded criminal investigations or prosecutions that did not result in conviction or deferred adjudication.

You indicate that the submitted information relates to a pending criminal investigation of the shooting incident.¹ Based on your representations and our review of the submitted information, we conclude that the release of information relating to the criminal investigation "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.–Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 at 3 (1978).

¹We note that the requestor contends that the investigation "is technically still open, but for all practical purposes is complete." This office is unable to make factual determinations or resolve factual disputes in the opinion process. See Attorney General Opinion JC-0534 at 1 (2002). We therefore must rely on a governmental body's representations. In this instance the city represents that the investigation was pending when these requests were received, and the submitted information does not contradict this representation.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. See 531 S.W.2d at 186-87. Thus, the city must release the types of information that are considered to be front page information, even if this information is not actually located on the front page. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Although section 552.108(a)(1) authorizes the city to withhold the remaining submitted information, it may choose to release all or part of the information that is not otherwise confidential by law. See Gov't Code § 552.007.

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).

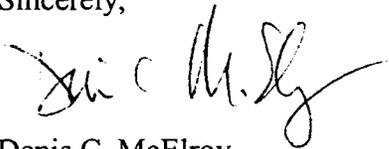
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 179032

Enc. Submitted documents

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