



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 14, 2003

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2003-2515

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179342.

The City of Mesquite (the "city") received a request for a named individual's personnel file, civil service file, and related investigative files of the Mesquite Police Department (the "department"). You state that you will release the responsive civil service file to the requestor pursuant to section 143.089 of the Local Government Code. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that the submitted information is made expressly public under section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

The submitted information consists of completed investigations which are expressly public under section 552.022(a). You do not claim that the submitted information is excepted under section 552.108. Therefore, you may withhold this information only if the information is confidential under other law. Although you argue that the submitted information is excepted under section 552.103 of the Government Code, section 552.103 is a discretionary exception and therefore is not "other law" for the purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, you may not withhold the submitted information under section 552.103.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a file that must be maintained by the city's civil service director or his designee and another file that may be maintained by the city's police department for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a peace officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the peace officer's civil service file maintained under section 143.089(a). Such records are subject to release under chapter 552 of the Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department's personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted information is "maintained pursuant to section 143.089(g) for use by the department" Based on your assertion that the submitted information is maintained in the department's personnel file, we find that the submitted information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

We note, however, that the submitted information relates to the misconduct of the officer in question that resulted in disciplinary action as prescribed by chapter 143. *See* Local Gov't Code §§ 143.051-.055 (removal, suspension, demotion, and uncompensated duty). While this type of information may be kept in the police department's personnel file, it must also

be kept in the civil service personnel file. Local Gov't Code §§ 143.052, .089(a)(2), (3). Because this information must be placed in the city's civil service file, it is subject to disclosure. However, information that is subject to public disclosure may still be excepted from disclosure under the exceptions in chapter 552 of the Government Code.

We note that section 552.117(2) of the Government Code excepts from disclosure "information that relates to the home address, home telephone number, or social security number" of a peace officer, or that reveals whether the peace officer has family members. Therefore, you must withhold this information under section 552.117(2) of the Government Code. However, under section 552.023 of the Government Code a person or a person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. Therefore, the requestor has a special right of access to his client's section 552.117 information pursuant to section 552.023 of the Government Code, and it must be released in this instance.

In summary, we conclude that: 1) to the extent the submitted information is maintained in the department's personnel file, it must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; and 2) the submitted information must be maintained in the city's civil service file and must be released, except for the section 552.117 information not belonging to the requestor's client.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/seg

Ref: ID# 179342

Enc: Submitted documents

c: Mr. Michael Rickman
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(w/o enclosures)