



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 27, 2003

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

OR2003-4417

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# 183434.

The City of League City Police Department (the "department"), which you represent, received a request for nine categories of information pertaining to a named department police officer, as well as various department policies, procedures, training manuals, and general orders. You state that certain responsive information will be released to the requestor, but claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.114, 552.115, 552.117, 552.119, 552.130 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you state that "[d]ocuments responsive to the request [items 1-7 & 9-10], will be either made available to the requestor or attached to this letter for the AG's review." We further note that you have not submitted any documents for our review that are responsive to item nine of the request, specifically, any department policies, procedures, training manuals, and general orders. We therefore assume that you have released all such responsive information to the requestor. If not, you must do so at this time. *See* Gov't Code §§ 552.301, .302.

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 deemed confidential by statute. In this regard, we note that a few of the documents you submitted to this office in Exhibits A and B consist of medical records that are made confidential under the Medical Practice Act (the "MPA"), Occ. Code §§ 151.001 *et. seq.* Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). The medical records we have identified must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). For your convenience, we have marked the documents that are medical records subject to the MPA.

We next address the applicability of section 143.089 of the Local Government Code to documents contained within Exhibits A and B. Section 552.101 of the Government Code exempts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. You state that League City has adopted 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 civil service director 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 investigates a police officer's misconduct and takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *Abbott v. Corpus Christi*, No. 03-02-00785-CV, slip op., 2003 WL 21241652, at \*7 (Tex. App.—Austin May 30, 2003, no pet. h.). All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or in possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel

file. *Id.* at \*5, \*7. 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 into his or her 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. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

You inform us that the department maintains two files on each police officer: (1) a civil service file maintained as required by Local Government Code section 143.089(a); and (2) an internal personnel file maintained by the police department, as permitted by Local Government Code section 143.089(g). You also indicate that you keep what is essentially a third file which is maintained by the human resources department (the "H.R. department") containing medical tests, psychological tests and pre-employment screening tests and background information gathered regarding an employee of the department. You state that the H.R. department maintains this information, which you have submitted as Exhibit B, as part of the officer's personnel file under section 143.089(g).

We find the maintaining of three files to be contrary to the purpose and legislative intent of section 143.089. As noted above, section 143.089 contemplates the existence of only two personnel files concerning a particular police officer. Documents relating to commendations, periodic evaluations by the officer's supervisor, and misconduct that resulted in disciplinary action against the officer under chapter 143 of the Local Government Code must be held in the civil service file and are subject to public disclosure under chapter 552 of the Government Code. *See* Local Gov't Code § 143.089(a)(1)-(2). Documents that relate to unsustained allegations of misconduct or disciplinary action taken without just cause must be held in the police department's confidential section 143.089(g) file. The maintenance of a third file, the contents of which are subject to public disclosure under chapter 552 of the Government Code, is contrary to League City's election to be governed by chapter 143 of the Local Government Code and to the legislative purpose of section 143.089. *See also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (restricting confidentiality under section 143.089(g) to "information reasonably related to a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files); *See also Abbott v. Corpus Christi*, No. 03-02-00785-CV, slip op., 2003 WL 21241652, at \*7 (Tex. App.— Austin May 30, 2003, no pet. h.).

You indicate that the requestor has already received the named officer's civil service file, redacted as agreed to by the requestor, and as authorized pursuant to Open Records Decision No. 670 (allowing governmental body to withhold home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether individual has family members, of peace officer, without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117(2) applies). You assert that the department's personnel file, which you have submitted as Exhibit A, is maintained pursuant to section 143.089(g). Based on this representation and our review of the information in Exhibit A, we find that this file is confidential and must therefore be withheld pursuant to section 552.101 of the Government Code. You also assert that the H.R. department's file "is considered part of the (g) file" and indicate that it contains certain information related to the named officer's employment relationship with the department. Because the the H.R. department's file is not maintained as a civil service file, it must be included as a part of the department personnel file. Accordingly, we conclude that H.R. department's personnel file, which you have submitted as Exhibit B, must also be withheld pursuant to section 552.101.<sup>1</sup>

We next address you arguments concerning the information contained within Exhibit C. You state that this information is being provided to the requestor, with the name of the suspect redacted pursuant to the requestor's instructions. In addition, you have withheld certain information from these documents under sections 552.108 and 552.130 of the Government Code. Section 552.108 provides in pertinent 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.

Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that documents numbered 000357 through 000368 relate to a pending criminal investigation. You seek to withhold the narrative contained in documents numbered 000359 through 000361 under section 552.108(a)(1). Based on your representations and our review of the submitted information, we conclude that the release of this information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code

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<sup>1</sup> Since your argument under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code is dispositive, we need not address your other named exceptions with regard to Exhibits A and B.

§ 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). Thus, documents numbered 000359 through 000361 may be withheld under section 552.108(a)(1).

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. You state that you have already released the types of information that is considered to be front page offense report information. *See* Gov't Code § 552.007.

We next note that 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[.]

Thus, we agree that you must withhold the Texas driver's license numbers, vehicle identification numbers, and license plate numbers you have highlighted in the submitted Exhibit C under section 552.130.

Finally, we note that Exhibit C contains an accident report form, ST-3, governed by chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) 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). This provision requires the department to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* You state that the requestor has not provided the department with two of the three requisite pieces of information. Therefore, we agree that the department must withhold the ST-3 accident report in Exhibit C in its entirety under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code.

To summarize, the medical records we have marked must be withheld from the requestor in accordance with the MPA. Exhibits A and B must be withheld from the requestor under

section 552.101 of the Government Code. The information you seek to withhold under section 552.108 in Exhibit C may be withheld under that section. The Texas driver's license numbers, vehicle identification numbers, and license plate numbers you have highlighted in Exhibit C must be withheld under section 552.130. The department must withhold the ST-3 accident report in Exhibit C under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code. The remaining submitted information in Exhibit C 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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

Ref: ID# 183434

Enc. Submitted documents

c: Mr. John W. Armstrong, III  
16826 Titan Drive  
Houston, Texas 77058  
(w/o enclosures)