



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2003

Mr. Steven M. Kean
Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR2003-7610

Dear Mr. Kean:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189854.

The City of Tyler Police Department (the "department") received a request for any information concerning a named officer. You state that you will release some responsive information. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.¹

Initially, we note that you state that this office has previously ruled on the same officer's internal affairs files in Open Records Letter No. 2002-5952 (2002). To the extent that the law, facts, or circumstances on which that ruling was based remain unchanged, you may rely on our previous ruling with respect to the exact information that was the subject of the previous ruling. *See* Gov't Code § 552.301(a); Open Records Decision 673 at 6-7 (2001) (attorney general decision constitutes first type of previous determination under Gov't Code § 552.301(a) where (1) precisely the same records or information previously were submitted under Gov't Code § 552.301(e)(1)(D), (2) same governmental body previously requested and

¹ 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.

received a ruling, (3) prior ruling concluded that same records or information are or are not excepted from disclosure, and (4) law, facts, and circumstances on which prior ruling was based have not changed).

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 of the Local Government Code. We understand that the City of Tyler is a civil service city under 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 an 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*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.) 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.* 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 internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).²

In this instance, you tell us that some of the requested information is maintained in the police department’s internal file pursuant to section 143.089(g). You tell us that some of the requested information is maintained in the city’s civil service file pursuant to section 143.089(a). The information that you have labeled as part of the department’s internal file is confidential and cannot be released. The information that you have labeled as part of the civil service director’s file is subject to disclosure. However, you argue that some of the information that is maintained in the section 143.089(a) file contains information that is protected by section 143.089(g) because it references investigations that did not result in disciplinary action as contemplated under chapter 143. The section 143.089(a) personnel file must contain “any letter, memorandum, or document relating to . . . the periodic evaluation of [the officer] by a supervisor.” Local Gov’t Code § 143.089(a)(3). Thus, while this

²We note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director’s designee. You inform us that you have done so.

information may be kept in the department's internal file, it must also be kept in the civil service personnel file. *Id.* § 143.089(a)(1), (3). Therefore, although evaluations maintained in the department's internal personnel file are confidential under section 143.089(g), the evaluations in the civil service personnel file are not confidential under that provision and may not be withheld under section 552.101 of the Government Code.

However, information that is subject to public disclosure may still be excepted from disclosure under the exceptions in chapter 552 of the Government Code. Therefore, we will address the remaining exceptions you claim with regard to the information that has been placed in the civil service file. Included among the documents you seek to withhold is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). You claim that accident report contained in the file is excepted from disclosure by section 550.065(b) of the Transportation Code. 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. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required 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.* In the situation at hand, the requestor has not provided the department with two of the three pieces of information. Thus, you must withhold the accident report under section 550.065(b).

We note that the information contained in the section 143.089(a) file contains a social security number. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the file is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act (the "Act") imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Section 552.130 of the Government Code 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[.]

To the extent the driver's license numbers and license plate number you have marked in the remaining information were issued by the State of Texas, they must be withheld under section 552.130.

In summary, to the extent that any of the information at issue was the exact information that was the subject of our prior ruling and the law, facts, or circumstances on which that ruling was based remain unchanged, you may rely on our previous ruling. You must withhold the information that you have labeled that is part of the department's internal file pursuant to section 143.089(g). You must withhold the accident report under section 550.065(b). The social security number may be confidential under federal law. To the extent the driver's license numbers and license plate number you have marked in the remaining information were issued by the State of Texas, they must be withheld under section 552.130. All remaining 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 189854

Enc: Submitted documents

c: Mr. William Payne
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Tyler, Texas 75701
(w/o enclosures)