



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2004

Ms. Mia Settle-Vinson  
Assistant City Attorney  
City of Houston Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2004-3479

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID#200498.

The City of Houston Police Department (the "department") received a request for eight categories of information related a named police officer. You state that the department will release some of the responsive information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.1175 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 made confidential by other statutes. Section 143.089(g) of the Local Government Code 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.

*Id.* § 143.089(g); *see also City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied) (concluding that legislature intended to deem confidential information maintained by police department for its own use under Local Gov't Code § 143.089(g)); *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet. h.) (restricting confidentiality under section 143.089(g) to information reasonably related to 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).

You inform us that the information submitted as Exhibit 2 is contained in departmental personnel files. You contend that this information is confidential under section 143.089(g). Based on your representation and our review of the information at issue, we conclude that Exhibit 2 is confidential under section 143.089(g) of the Local Government Code and is therefore excepted from disclosure under section 552.101 of the Government Code as information made confidential by law.<sup>1</sup> Because section 552.101 is dispositive in this case, we need not address your other claimed exceptions.

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

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<sup>1</sup>We note that section 143.089(g) requires a police department that receives a request for information under section 143.089(g) to refer the requestor to the civil service director or the director's representative. In the City of Houston's (the "city") human resources department received a similar request, and the human resources department is processing the request accordingly. We note that the civil service director is part of the human resources department. If not, and the department does so, you must refer the requestor to the civil service director as required by the

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answer, of  
course, say  
hi to everyone  
for me -

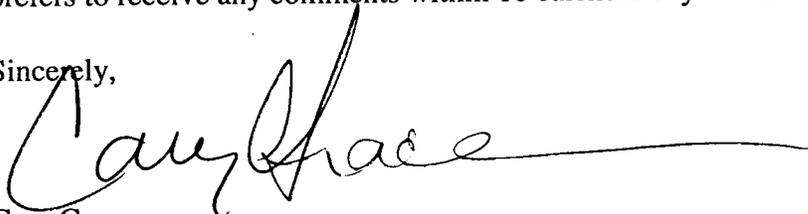
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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,



Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/krl

Ref: ID# 200498

Enc. Submitted documents

c: Mr. John W. Armstrong III  
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(w/o enclosures)